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CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

SARKIS INVESTMENTS
COMPANY, LLC,

Debtor.

No. 2:13-bk-29180-RK

Chapter 11

**MEMORANDUM DECISION ON MOTION OF
CREDITOR GHAZAR ZEHNALY FOR
RECONSIDERATION OF ORDER
DISALLOWING HIS PROOF OF CLAIM**

Trial

Date: February 7, 2019

Time: 10:00 a.m.

Place: Courtroom 1675

Roybal Federal Building

255 East Temple Street

Los Angeles, California 90012

This bankruptcy case came on for trial on February 7, 2019 before the undersigned United States Bankruptcy Judge on the Motion for Reconsideration of Order Disallowing Creditor Ghazar Zehnaly's Proof of Claim 7-1 ("Motion") of Creditor Ghazar Zehnaly, Electronic Case Filing Number ("ECF") 589, filed on November 27, 2018. Creditor Ghazar Zehnaly ("Creditor Zehnaly") appeared for himself. Ashley M. McDow of the law firm of Foley & Lardner, LLP appeared for Debtor Sarkis Investments Company, LLC ("Debtor"). Ralph V. Palmieri, Attorney at Law, appeared for Interested Party Angelique Bernstein.

1 Having considered the moving and opposing papers, including the supplemental post-
2 trial briefing of the parties, filed on February 14, 2019 and March 21, 2019, the exhibits
3 received and testimony of the witnesses heard, the court sets forth its findings of fact and
4 conclusions of law in this memorandum decision, pursuant to Federal Rule of Civil Procedure
5 52, made applicable here by Federal Rules of Bankruptcy Procedure 7052 and 9014(c), and
6 determines that the Motion should be granted for the reasons stated below.

7 **I. FACTS**

8 **A. Background and the Claim Objection**

9 Debtor owned commercial real estate which was operated as a multi-tenant shopping
10 center located at the following addresses: 3550 Porsche Way, 3640 Porsche Way, 3660
11 Porsche Way, 3700 Inland Empire Boulevard, and 370 Inland Empire Boulevard, Ontario,
12 California 91764 (collectively, the "Sarkis Properties"). *Schedule A- Real Property*, ECF 5,
13 filed on July 30, 2013; *Chapter 11 Status Report*, ECF 67, filed on September 4, 2013. On
14 Debtor's Schedule A – Real Property, Debtor asserted that the current value of the Sarkis
15 Properties was approximately \$25,000,000.00 subject to a secured claim of approximately
16 \$22,000,000.00. *Id.*

17 Creditor Zehnaly is a real estate investor and has been a real estate investor since
18 1994. *Testimony of Creditor Zehnaly, Audio Recording of Trial, February 2, 2019. 2:09-2:10*
19 *p.m.* He owns nine buildings. *Id.* Creditor Zehnaly immigrated to the United States from Iran
20 in 1990, and Farsi is his first language. *Id.*, 10:44 a.m. English is a second language for him.
21 *Id.*

22 On October 31, 2012, Creditor Zehnaly entered into a Probate Purchase Agreement to
23 purchase three commercial properties from Debtor for \$23,300,000.00. *Declaration of Ghazar*
24 *Zehnaly*, attached to Motion, ECF 589 at 11 and Exhibit 1 attached thereto. In accordance
25 with this agreement, Creditor Zehnaly paid an initial \$500,000.00 down payment for the Sarkis
26 Properties. *Id.* According to Creditor Zehnaly, he paid the initial down payment of \$500,000
27 directly to Debtor as the seller for purchase of the real property owned by Debtor, and there
28 was no escrow. *Testimony of Creditor Zehnaly, Audio Recording of Trial, February 2,*

1 2019.11:35-11:36 a.m. According to Attachment One to the Counter Offer to the Purchase
2 Agreement, Creditor Zehnaly needed to obtain the consent from the holder of the deed of
3 trustee encumbering the Sarkis Properties to assume the loan secured by the deed of trust in
4 the amount of \$19,300,000.00. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589
5 at 11 and Exhibit 2 attached thereto.

6 On April 16, 2013, Creditor Zehnaly learned for the first time that Debtor had failed to
7 disclose to him that it was already in default under the terms of the existing loan, and that the
8 outstanding balance on the loan was \$20,847,414.59 with accrued note interest of
9 \$518,694.10 and accrued default interest of \$3,516,034.59, plus costs of \$209,921.85, which
10 increased the obligations of the lender to \$25,092,065.28. *Declaration of Ghazar Zehnaly*,
11 attached to Motion, ECF 589 at 11. According to Creditor Zehnaly, as of April 2013, he was
12 adamant that he would be only willing to proceed with the Probate Purchase Agreement if he
13 received assurances that he would not be responsible for curing the default. *Declaration of*
14 *Ghazar Zehnaly*, attached to Motion, ECF 589 at 11 and Exhibit 3 attached thereto. Creditor
15 Zehnaly continued to cooperate and provide documents and information to the lender in the
16 hopes that he would be able to resolve the issue of the default and that he would be able to
17 purchase the Sarkis Properties at the originally agreed price of \$23,300,000.00, free and clear
18 of any default, default interest or costs. *Id.*

19 However, as of July 29, 2013, Creditor Zehnaly and Debtor were unable to resolve the
20 issue regarding the default, and the Probate Purchase Agreement was cancelled, and
21 according to Creditor Zehnaly, Debtor refused to return his \$500,000.00 down payment.
22 *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12. On the same day, on July
23 29, 2013, Debtor commenced this bankruptcy case by filing a voluntary petition for relief under
24 Chapter 11 of the Bankruptcy Code, 11 U.S.C. ECF 1; *Declaration of Ghazar Zehnaly*,
25 attached to Motion, ECF 589 at 12 and Exhibit 4 attached thereto.

26 Creditor Zehnaly retained Shant Ohanian ("Ohanian"), of the law firm of Ohanian &
27 Tikriti, as his attorney to protect his rights, file a proof of claim and to attempt to acquire the
28 Sarkis Properties for him through the bankruptcy case. *Declaration of Ghazar Zehnaly*,

1 attached to Motion, ECF 589 at 12 and Exhibit 4 attached thereto. According to Creditor
2 Zehnaly, he believed thereafter that Ohanian "was representing and advocating [his] rights in
3 the Bankruptcy Court." *Id.*

4 On November 12, 2013, Creditor Zehnaly filed his proof of claim in this case, Claim
5 Number 7-1. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 11 and Exhibit 4
6 attached thereto. The proof of claim was signed and filed on behalf of Creditor Zehnaly by his
7 attorney, Shant Ohanian, of the law firm of Ohanian & Tikriti, PC, of Pasadena, California. *Id.*
8 The amount of the claim asserted in the proof of claim was \$500,000, and the proof of claim
9 indicated that notices relating to the proof of claim should be sent to Ohanian at his office
10 address at Ohanian & Tikriti, PC, 35 North Lake Ave., Suite 720, Pasadena, CA 91101.
11 *Exhibit 4 to Declaration of Ghazar Zehnaly* at 1. The proof of claim did not indicate any other
12 address for Creditor Zehnaly, such as his mailing or residence address. *See id.* The proof of
13 claim stated that the basis of the claim was a "Deposit for Commercial Real Estate Purchase."
14 *Id.* at 1. Attached to the proof of claim in support of Creditor Zehnaly's claim were copies of a
15 real estate purchase and sales agreement entitled "Counter Offer No. 1" dated October 31,
16 2012 with various attached documents which were signed by Creditor Zehnaly and Debtor by
17 Donald L. Scoggins for Pamela Muir, Debtor's managing member. *Id.* Creditor Zehnaly hired
18 Ohanian as his attorney only a few days before the proof of claim was filed. *Testimony of*
19 *Creditor Zehnaly, Audio Recording of Trial, February 2, 2019, 10:44 a.m.*

20 On August 10, 2015, Debtor filed its Motion for Order Disallowing Proof of Claim No. 7-1
21 filed by Ghazar Zehnaly. ECF 343, filed on August 10, 2015. The proof of service of Debtor's
22 motion for order disallowing Creditor Zehnaly's claim indicated that service on him was in care
23 of his counsel, Ohanian, at Ohanian's office address, which was the address indicated for
24 notices to him on the proof of claim. *Id.*; *see Proof of Claim 7-1*, filed on November 12, 2013.
25 Debtor had noticed the hearing on the Motion for September 9, 2015, but the court continued
26 the hearing to September 16, 2015.

27 On August 31, 2015, Creditor Zehnaly by his counsel, Ohanian, filed an opposition to
28 Debtor's motion for an order disallowing his claim. ECF 366, filed on August 31, 2015.

1 Counsel for Creditor Zehnaly, Ohanian, filed this document manually rather than electronically
2 as it appears that he was not an authorized electronic filer with the court pursuant to Local
3 Bankruptcy Rule 5005-4. *Id.* Although Ohanian listed an email address on the caption of this
4 document, the court would not serve him electronically because he is not an authorized
5 electronic filer and apparently has not otherwise consented to electronic service by the court
6 pursuant to Local Bankruptcy Rule 9036-1. The only declaration in support of the factual
7 allegations in opposition to Debtor's motion was the declaration of Creditor Zehnaly's counsel,
8 Ohanian, and there was no declaration from Creditor Zehnaly himself in support of the factual
9 allegations of his opposition to Debtor's motion. See ECF 366, filed on August 31, 2015.

10 At the hearing on Debtor's motion objecting to Creditor Zehnaly's claim on September
11 16, 2015, Ohanian appeared on Zehnaly's behalf. *Audio Recording of Hearing on September*
12 *16, 2015.* At the hearing, the court expressed its concern that the declaration in support of
13 Creditor Zehnaly's opposition to the motion was not that of Creditor Zehnaly, but that of
14 Ohanian, who did not appear to have personal knowledge of the factual allegations in the
15 opposition. *Id.* Ohanian stated that he was having "some personal issues" and was trying to
16 find a new attorney who was familiar with bankruptcy law to represent Creditor Zehnaly. *Id.* At
17 the hearing, the court continued the hearing for two weeks to September 30, 2015 and ordered
18 Creditor Zehnaly to submit a declaration in support of his factual allegations in opposition to
19 the motion within one week by September 23, 2015. *Id.*

20 By order filed and entered on September 21, 2015 (ECF 382), the court continued the
21 hearing on the Motion from September 16, 2015 to September 30, 2015 in order for Creditor
22 Zehnaly to file a declaration based on his personal knowledge and executed under penalty of
23 perjury attesting to the veracity of the allegations in the opposition and the authenticity of the
24 exhibits appended thereto.

25 On September 23, 2015, Creditor Zehnaly filed his declaration signed by him which set
26 forth his factual allegations under penalty of perjury in support of opposition to Debtor's motion
27 objecting to his claim. ECF 384, filed on September 23, 2015. The caption of the declaration
28

1 did not indicate that Creditor Zehnaly was still represented by Ohanian as his counsel and did
2 not otherwise refer to Ohanian. *Id.*

3 At the continued hearing on Debtor's motion objecting to Creditor Zehnaly's claim on
4 September 30, 2015, Ohanian appeared on Zehnaly's behalf. *Audio Recording of Hearing on*
5 *September 30, 2015*. At the hearing on September 30, 2015, the court set a schedule of
6 pretrial proceedings on the motion, including a post-discovery status conference for February
7 24, 2016 at 1:30 p.m. *Id.* The schedule of pretrial proceedings was set forth in the court's
8 scheduling order filed and entered on October 6, 2015. ECF 394, filed and entered on October
9 6, 2015. The court's notice of electronic filing (NEF) for this document indicated as a party
10 "Shant Ohanian on behalf of Interested Party Ghazar Zehnaly, 600 S Lake Ave Ste 200,
11 Pasadena, CA 91106," but that notice would not be electronically mailed to such party. *Id.*

12 However, while counsel for Creditor Zehnaly, Ohanian, was present at the hearing on
13 September 30, 2015 when the court set the schedule of pretrial proceedings, including a
14 further status conference on February 24, 2016, the proof of service of the scheduling order of
15 October 6, 2015 by the Bankruptcy Noticing Center on behalf of the court indicated that neither
16 Creditor Zehnaly nor his counsel, Ohanian, was served with the order to show cause.
17 *Bankruptcy Noticing Center Certificate of Notice*, ECF 396, filed on October 8, 2015.

18 At the status conference on Debtor's motion objecting to Creditor Zehnaly's claim on
19 February 24, 2016, counsel for Debtor appeared, but no appearance was made on behalf of
20 Creditor Zehnaly by his counsel, Ohanian. *Audio Recording of Hearing on February 24, 2016*.
21 Counsel for Debtor reported that the parties were scheduled to appear for a mediation
22 conference on March 12, 2016 and requested a continuance of the status conference after the
23 mediation. *Id.* The court set a further status conference for April 6, 2016 at 11:00 a.m. and
24 directed counsel for Debtor to notify Creditor Zehnaly, through Ohanian, of the further status
25 conference on April 6, 2019 at the mediation or by email, and counsel for Debtor said he
26 would. *Id.* The case docket reflects that no formal notice of the status conference on April 6,
27 2016 was served on Creditor Zehnaly or his counsel, Ohanian.

B. The Events Surrounding the Court's Order to Show Cause

At the status conference on Debtor's motion objecting to Creditor Zehnaly's claim on April 6, 2016, counsel for Debtor appeared, but no appearance was made on behalf of Creditor Zehnaly by his counsel, Ohanian. *Audio Recording of Hearing on April 6, 2016*. Counsel for Debtor reported that the scheduled mediation did not go forward on March 12, 2016 because counsel for Creditor Zehnaly, Ohanian, advised her that he was not sure that he was still representing Creditor Zehnaly. *Id.* The court indicated that counsel for Creditor Zehnaly should have appeared and indicated that it would issue an order to show cause regarding the failure of Creditor Zehnaly or his counsel to appear at the status conference, and counsel for Debtor confirmed that she had confirmation that an email notification of the April 6, 2016 status conference was sent to Ohanian. *Id.*

Later that day, on April 6, 2016 at 6:38 p.m., counsel for Debtor filed a Bankruptcy Case Status Report for the status conference in the underlying bankruptcy case set for April 13, 2016. ECF 442, filed on April 6, 2016. The status report was addressed on page 1 to the undersigned United States Bankruptcy Judge, and to no one else, but the proof of service of the status report indicated that counsel for Debtor mailed copies of the status report on April 6, 2016 to serve: (1) counsel for Creditor Zehnaly, Ohanian, at his office address; and (2) Creditor Zehnaly himself at his mailing address at 4326 Fairlawn Drive, La Canada, CA 91101-3115. *Id.* The subject matter of the two-page status report was the Debtor's motion objecting to Creditor Zehnaly's claim, which Debtor described as follows: "The principal dispute remaining in the Bankruptcy Case pertains to the validity and amount of the proof of claim (the 'Zehnaly Claim') asserted by Ghazar Zehnaly ('Claimant')." *Id.* at 1. Debtor reported that the deposition of Creditor Zehnaly had been taken on March 7, 2016, and Debtor and Creditor Zehnaly had agreed to mediation, which was first scheduled for January 25, 2016 and rescheduled to March 14, 2016 at the request of Creditor Zehnaly's counsel, Ohanian, due to a family emergency of counsel. *Id.* at 1-2. Debtor then reported that Creditor Zehnaly's counsel informed Debtor that Creditor Zehnaly was no longer willing to participate in mediation, and despite Debtor's attempts to follow up with Creditor Zehnaly's counsel to proceed with

1 mediation, Debtor did not receive any response from Creditor Zehnaly or his counsel. *Id.* at 2.
2 Debtor then stated as follows: "On or about April 6, 2016, the Court held a status conference
3 regarding the motion to disallow the Zehnaly Claim. Despite being directed to do so, the
4 Claimant failed to appear for the status conference. Accordingly, the Court stated its intention
5 to issue an order to show cause why the Zehnaly Claim should not be disallowed for want of
6 prosecution (the 'OSC'). The Court indicated that the hearing on the OSC will be held on May
7 4, 2106 at 11:00 a.m." *Id.* According to Creditor Zehnaly, he did not receive Debtor's
8 Bankruptcy Case Status Report of April 6, 2016 and did not otherwise know of it. *Testimony of*
9 *Creditor Zehnaly, Audio Recording of Trial, February 2, 2019. 2:00-2:01 p.m. and 2:18 p.m.*

10 On April 11, 2016, the court issued its order to show cause why the claim of Creditor
11 Zehnaly should not be disallowed for lack of prosecution as a sanction for failing to appear at
12 the status conference on April 6, 2016. ECF 443, filed and entered on April 11, 2016. The
13 order to show cause set a hearing date and time of May 4, 2016 at 11:00 a.m. *Id.* The court's
14 notice of electronic filing (NEF) for this document indicated as a party "Shant Ohanian on
15 behalf of Interested Party Ghazar Zehnaly, 600 S Lake Ave Ste 200, Pasadena, CA 91106,"
16 but that notice would not be electronically mailed to such party. *Id.* The proof of service of the
17 order to show cause by the Bankruptcy Noticing Center on behalf of the court indicated that
18 neither Creditor Zehnaly nor his counsel, Ohanian, was served with the order to show cause.
19 *Bankruptcy Noticing Center Certificate of Notice*, ECF 446, filed on April 13, 2016.

20 **C. The Purported Orders Received by Creditor Zehnaly, Debtor's Status Reports,**
21 **and the Claim Objection Litigation**

22 According to Creditor Zehnaly, from November 2013 through September 2017, Ohanian
23 represented to Creditor Zehnaly both orally and in writing on numerous occasions that Creditor
24 Zehnaly's proof of claim was being litigated in the Bankruptcy Court. *Declaration of Ghazar*
25 *Zehnaly*, attached to Motion, ECF 589 at 12 and Exhibit 4 attached thereto. Also, according to
26 Creditor Zehnaly, on numerous occasions between April 2016 and September 2017, Ohanian
27 represented to Creditor Zehnaly both orally and in writing that the Bankruptcy Court had
28 awarded the Sarkis Properties as well as other assets and properties to Creditor Zehnaly,

1 subject to certain conditions. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at
2 12-15 and Exhibits 5-16 attached thereto. Moreover, according to Creditor Zehnaly, on
3 numerous occasions between April 2016 and September 2017, Ohanian advised Creditor
4 Zehnaly both orally and in writing that there were numerous complications with taking
5 possession of the Sarkis Properties due to multiple lien claimants, tax liabilities, various law
6 and motion matters and appeals. *Id.* Thus, according to Creditor Zehnaly, Ohanian advised
7 Creditor Zehnaly orally and in writing that the Bankruptcy Court required Creditor Zehnaly to
8 deposit or pay certain funds to protect his interest in the Sarkis Properties and to ensure that
9 Creditor Zehnaly could acquire the Sarkis Properties free and clear of all liens, taxes and
10 encumbrances. *Id.*

11 Creditor Zehnaly testified that on or about April 18, 2016, he received a hand-delivered
12 copy of a purported order of the court in this case entitled "Order: Granting Creditor Zehnaly
13 Possession of Debtor's Assets Inclusive Sold Property—Pending Election of Assets by
14 Creditor," which bore a file-stamped date of entry of April 18, 2016 and a docket entry number
15 of 188. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12-15 and Exhibit 5
16 attached thereto. The purported order stated that the court, upon consideration of Creditor
17 Zehnaly's motion "for an order requesting Debtor's surrender of all assets, inclusive of prior
18 sold properties due to Debtor's failure to fully compensate Creditor," ordered the granting of
19 the motion. *Id.* The purported order further ordered that the prior sale of Debtor's real property
20 (which had been previously ordered in the case) be cancelled and nullified, that Creditor
21 Zehnaly had 30 days "to complete change of title for the Property," but that if this was not
22 completed, "Creditor retain[ed] the rights to collect from Debtor's other assets." *Id.* The
23 purported order bore the electronic signature of the undersigned United States Bankruptcy
24 Judge. *Id.* The purported order is bogus, as demonstrated by at least the following facts: the
25 purported order is not shown on the docket of this case; the docket number of 188 for this
26 purported order is false because the case docket reflects another document, Debtor's monthly
27 operating report number 32 for March 2016, filed on the same date of April 18, 2016, as docket
28 number 447; the docket number at the top of the purported order has inconsistent dating,

1 "Filed 04/18/16" and "Entered 04/13/13"; and the language of the purported order is internally
2 inconsistent and uses incorrect terms, e.g., stating that the motion being considered was "the
3 motion of Creditor, Ghazar Zehnaly (the 'Creditor'; the 'Creditor-in-Possession') for an order
4 requesting Debtor's surrender of all assets)," versus "1. The Debtor's Motion is granted." *Id.*

5 According to Creditor Zehnaly, in his declaration in support of the motion, a copy of this
6 purported order was hand-delivered to him by a purported court courier who he later
7 discovered was Ohanian's wife, Silva Sevlian. *Id.* Also according to Creditor Zehnaly in his
8 declaration in support of his motion, at about the same time, Creditor Zehnaly received oral
9 and written advice from his attorney, Ohanian, that he was required to deposit or pay funds to
10 protect his interest in the Sarkis Properties and to ensure that he could acquire them free and
11 clear of liens. *Id.* Furthermore, Creditor Zehnaly stated in his declaration in support of his
12 motion, also at about the same time, he received a telephone call from a purported court clerk
13 using the name "Debra" or "Barbara" regarding the purported order. *Id.* At trial, Creditor
14 Zehnaly clarified his prior statement in his declaration that he got this particular order from
15 Ohanian. *Testimony of Creditor Zehnaly, Audio Recording of Trial, February 2, 2019, 10:47-*
16 *10:48 a.m.* Creditor Zehnaly did not realize at the time that this order was a bogus document
17 or that Ohanian was defrauding him because Creditor Zehnaly trusted Ohanian. *Id., 10:48-*
18 *10:49 a.m., 11:01 a.m.*

19 On April 20, 2016, counsel for Debtor filed a Bankruptcy Case Status Report for the
20 status conference in the underlying bankruptcy case set for May 4, 2016. ECF 448, filed on
21 April 20, 2016. The status report was addressed on page 1 to the undersigned United States
22 Bankruptcy Judge, "ALL INTERESTED PARTIES AND/OR THEIR COUNSEL OF RECORD,"
23 and the proof of service of the status report indicated that counsel for Debtor mailed copies of
24 the status report on April 20, 2016 to serve: (1) counsel for Creditor Zehnaly, Ohanian, at his
25 office address; and (2) Creditor Zehnaly himself at his mailing address at 4326 Fairlawn Drive,
26 La Canada, CA 91101-3115. *Id.* The subject matter of the three-page status report was the
27 Debtor's motion objecting to Creditor Zehnaly's claim which stated that the court had
28 conducted a status conference in the underlying bankruptcy case on February 24, 2016, which

1 counsel for Creditor Zehnaly failed to attend; that the court set a further status conference on
2 April 6, 2016; that it ordered Creditor Zehnaly to appear through counsel at the April 6, 2016
3 status conference and directed counsel for Debtor to give written notice of the continued status
4 conference on April 6, 2016 to counsel for Creditor Zehnaly, which they did; that Debtor had
5 taken the deposition of Creditor Zehnaly during which "Sarkis uncovered numerous facts that
6 undercut the positions advanced by Claimant [Zehnaly] in opposition the Claim Objection"; that
7 Creditor Zehnaly's counsel informed Debtor that Creditor Zehnaly was no longer willing to
8 participate in mediation; and that the court had conducted another status conference in the
9 bankruptcy case on April 6, 2016, at which counsel for Creditor Zehnaly also failed to appear,
10 and the court had issued an order to show cause to Creditor Zehnaly to file a written response
11 to the order to show cause and set a hearing on the order to show cause for May 4, 2016 at
12 11:00 a.m. *Id.* at 2-3. Debtor in this status report stated that "Sarkis has not been contacted
13 by the Claimant or counsel for the Claimant regarding the proposed mediation or the OSC.
14 Furthermore, as of the filing of this Status Report, the Claimant has failed to file anything
15 relating to the OSC or justifying his unilateral termination of the proposed mediation or failure
16 to appear for the February 24, 2016 and April 6, 2016, status conferences." *Id.* at 3.

17 Creditor Zehnaly testified that on or about April 28, 2016, he received a hand-delivered
18 copy of a purported order of the court in this case entitled "Court's Disclosure of Liabilities
19 Connected to Property Located in Ontario, CA," which bore a file-stamped date of entry of April
20 28, 2016 and a docket entry number of 189. *Declaration of Ghazar Zehnaly*, attached to
21 Motion, ECF 589 at 12-15 and Exhibit 6 attached thereto. The purported order stated that,
22 based upon Creditor Zehnaly's motion, "asking to take possession of Debtor's present assets,
23 the court must disclose the current liabilities connected to the Property commonly known as
24 3550 Porsche Way, 3640 Porsche Way, 3660 Porsche Way, 3700 Inland Empire Boulevard,
25 and 3760 Inland Empire Boulevard, Ontario, CA 91764 (collectively, the 'Property')." *Id.* The
26 purported order further ordered that "[t]he Court commence proceedings to assign the Property
27 to the Creditor after full disclosure of the Property's liabilities have been satisfied"; that "[t]he
28 Court provide the Creditor 30 calendar days to complete the assignment or satisfaction of any

1 lien holders on the Property"; and that "Creditor satisfy all approved claims of remaining
2 creditors within 180 days after change of title has been completed." *Id.* The purported order
3 bore the electronic signature of the undersigned United States Bankruptcy Judge. *Id.* The
4 purported order is bogus, as demonstrated by at least the following facts: the purported order
5 is not shown on the docket of this case; the docket number of 189 for this purported order is
6 false because the case docket reflects another document, Debtor's status report filed about a
7 week earlier on the date of April 20, 2016, as docket number 448; the docket number at the top
8 of the purported order has inconsistent dating, "Filed 04/27/16" and "Entered 04/13/13"; and
9 the language of the purported order does not reflect proper court procedures, such as to
10 "commence proceedings to assign the Property to the Creditor after full disclosure of the
11 Property's liabilities have been satisfied." *Id.*

12 According to Creditor Zehnaly, in his declaration in support of the motion, a copy of this
13 purported order was hand-delivered to him by a purported court courier who he later
14 discovered was Ohanian's wife, Silva Sevlian. *Id.* At about the same time, Creditor Zehnaly
15 received oral and written advice from his attorney, Ohanian, that he was required to deposit or
16 pay funds to protect his interest in the Sarkis Properties and to ensure that he could acquire
17 them free and clear of liens. *Id.* Also at about the same time, Creditor Zehnaly received a
18 telephone call from a purported court clerk using the name "Debra" or "Barbara" regarding the
19 purported order. *Id.*

20 At the hearing on the order to show cause on May 4, 2016, counsel for Debtor
21 appeared, and counsel for Creditor Zehnaly, Ohanian, appeared. *Audio Recording of Hearing*
22 *on May 4, 2016.* Counsel for Creditor Zehnaly, Ohanian, stated that he was contacted by his
23 client on March 27, 2016 who told Ohanian that he was going to find new counsel to represent
24 him, but Ohanian said he told Creditor Zehnaly about the April 6, 2016 status conference. *Id.*
25 Ohanian further stated that his client, Creditor Zehnaly, told him on May 2, 2016 that he had
26 not found new counsel and asked Ohanian to appear for him at the order to show cause
27 hearing on May 4, 2016. *Id.* In response, Counsel for Debtor requested that the court deny
28 the claim for lack of prosecution because it was a recurrent theme of Creditor Zehnaly over 9

1 months that the claim objection had been pending that he was seeking to retain new counsel
2 to defend the claim. *Id.* After hearing from counsel for the parties, the court ruled that the
3 claim of Creditor Zehnaly should be disallowed for failure to prosecute due to the failure to
4 appear at the status conference on April 6, 2016, the failure to file a written response to the
5 order to show cause, and the failure to retain counsel to defend the claim objection. *Id.*

6 On May 12, 2016, counsel for Debtor filed a notice of lodgment of a proposed order
7 regarding the motion for disallowing the proof of claim filed by Ghazar Zehnaly with a copy of a
8 proposed order for disallowance of the proof of claim. ECF 451, filed on May 12, 2016. The
9 proof of service of the notice of lodgment indicated that counsel for Debtor mailed the notice of
10 lodgment on May 12, 2016 to counsel for Creditor Zehnaly, Ohanian, at his office address, on
11 behalf of Creditor Zehnaly, but there is no indication of service on Creditor Zehnaly himself at
12 his mailing address. *Id.*

13 Creditor Zehnaly testified that on or about May 24, 2016, he received a hand-delivered
14 copy of a purported order of the court in this case entitled "Order: Granting Creditors' Request
15 to Secure Funds to Make Creditors Whole," which bore a file-stamped date of entry of May 24,
16 2016 and a docket entry number of 208. *Declaration of Ghazar Zehnaly*, attached to Motion,
17 ECF 589 at 12-15 and Exhibit 7 attached thereto. The purported order stated that it was based
18 upon the motion of purported creditors Bank of America, First Financial, Capital One, and
19 BankUnited "for an order requesting Creditor Zehnaly ('Zehnaly') to provide guarantees for
20 monies to be paid to Creditors after Zehnaly has taken possession of the Property commonly
21 known as 3550 Porsche Way, 3640 Porsche Way, 3660 Porsche Way, 3700 Inland Empire
22 Boulevard, and 3760 Inland Empire Boulevard, Ontario, CA 91764 (collectively, the 'Property').
23 . . ." *Id.* The purported order further ordered that "Zehnaly deposit an amount equal to 25% of
24 the monies owed to the creditors in an interest-bearing client trust account," noting that "[t]he
25 current total due to the Creditors is \$442,002.65," that "Zehnaly is to fully compensate the
26 remaining Creditors within 180 days of title to the Property having been recorded in Zehnaly's
27 name," and that "[t]he Trustee [was] to record a lien on the Property for the remaining balance
28 owed to the Creditors following the change of title to the Property. . . ." *Id.* The purported

1 order bore the electronic signature of the undersigned United States Bankruptcy Judge. *Id.*
2 The purported order is bogus, as demonstrated by at least the following facts: the purported
3 order is not shown on the docket of this case; the docket number of 208 for this purported
4 order is false because the case docket reflects another document, Debtor's monthly operating
5 report number 33 for April 2016 filed about a week earlier on the date of May 16, 2016, as
6 docket number 452; the document was stamped "CONFIDENTIAL" at the top of the purported
7 order; and the language of the purported order does not reflect proper court procedures, such
8 as to "grant Creditors' request to secure funds to make Creditors whole." *Id.* According to
9 Creditor Zehnaly, in his declaration in support of the motion, a copy of this purported order was
10 hand-delivered to him by a purported court courier who he later discovered was Ohanian's
11 wife, Silva Sevljan. *Id.* At about the same time, Creditor Zehnaly received oral and written
12 advice from his attorney, Ohanian, that he was required to deposit or pay funds to protect his
13 interest in the Sarkis Properties and to ensure that he could acquire them free and clear of
14 liens. *Id.* Also at about the same time, Creditor Zehnaly received a telephone call from a
15 purported court clerk using the name "Debra" or "Barbara" regarding the purported order. *Id.*

16 On June 1, 2016, counsel for Debtor filed a Bankruptcy Case Status Report for the
17 status conference in the underlying bankruptcy case set for June 15, 2016. ECF 453, filed on
18 June 1, 2016, Debtor's Exhibit A. The status report was addressed on page 1 to the
19 undersigned United States Bankruptcy Judge, and to no one else, but the proof of service of
20 the status report indicated that counsel for Debtor mailed copies of the status report on June 1,
21 2016 to serve: (1) counsel for Creditor Zehnaly, Ohanian, at his office address, and
22 (2) Creditor Zehnaly himself at his mailing address at 4326 Fairlawn Drive, La Canada, CA
23 91101-3115. *Id.* The status report provided a detailed one and a half pages of text reporting
24 on the status of the litigation of Debtor's objection to the claim of Creditor Zehnaly, which
25 stated that the court had issued an order to show cause to Creditor Zehnaly on April 11, 2016
26 why his claim should not be disallowed for his failure to appear personally or by counsel at the
27 status conference on the claim objection on April 6, 2016; that the court had found that
28 Creditor Zehnaly failed to respond to the order to show cause and failed to discharge the order

1 to show cause; that the court granted the claim objection as a sanction for Creditor Zehnaly's
2 failure to defend; and that Debtor had lodged a proposed order granting the claim objection,
3 which was under court review. *Id.* Debtor then stated in its status report that "[u]pon entry of
4 the Claim Objection Order, the Claimant [Creditor Zehnaly] will have an opportunity to seek
5 reconsideration or file an appeal from such order. Accordingly, the Debtor requests that the
6 Court continue the status conference for a period of thirty (30) days to allow for the expiration
7 of the appeal and reconsideration periods after entry of the Claim Objection Order." *Id.* at 3.

8 At trial, Creditor Zehnaly testified that he was not aware of the Bankruptcy Case Status
9 Report filed and served by counsel for Debtor on June 1, 2016 because he did not receive it.
10 *Zehnaly Testimony, Audio Recording of Trial, February 2, 2019, 2:00-2:01 p.m.* Creditor
11 Zehnaly also testified that he did not receive bankruptcy court related documents from the
12 court in the mail to his mailbox. *Id.*, 11:27 a.m. and 2:04 p.m. Creditor Zehnaly testified that a
13 reason for him not receiving his bankruptcy related mail was that Ohanian was probably
14 intercepting his mail. *Id.*

15 On June 3, 2016, the court filed and entered its order disallowing the Proof of Claim
16 Number 7-1 of Creditor Zehnaly. ECF 454, filed and entered on June 3, 2016. The court's
17 notice of electronic filing (NEF) for this document indicated as a party "Shant Ohanian on
18 behalf of Interested Party Ghazar Zehnaly, 600 S Lake Ave Ste 200, Pasadena, CA 91106,"
19 but that notice would not be electronically mailed to such party. *Id.* The proof of service of the
20 order disallowing Creditor Zehnaly's proof of claim by the Bankruptcy Noticing Center on behalf
21 of the court indicated that neither Creditor Zehnaly nor his counsel, Ohanian, was served with
22 that order. *Bankruptcy Noticing Center Certificate of Notice*, ECF 455, filed on June 5, 2016.

23 Creditor Zehnaly testified that on or about July 19, 2016, he received a hand-delivered
24 copy of a purported order of the court in this case entitled "Order: Granting Creditor Zehnaly
25 Final Possession of Debtor's Assets," which bore a file-stamped date of entry of July 19, 2016
26 and a docket entry number of 256. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF
27 589 at 12-15 and Exhibit 8 attached thereto. The purported order stated that the motion of
28 Creditor Zehnaly was granted; that "Creditor Zehnaly be given possession and title of Debtor's

1 Property commonly known as 3550 Porsche Way, 3640 Porsche Way, 3660 Porsche Way,
2 3700 Inland Empire Boulevard, and 3760 Inland Empire Boulevard, Ontario, CA 91764
3 (collectively, the 'Property')"; and that "[t]he date of change of possession for the Property shall
4 be retroactively be deemed to be June 17, 2016, and Creditor Zehnaly shall receive a pro-
5 rated award of all rents and monies originally due to the Debtor." *Id.* The purported order
6 further ordered that "[t]he Trustee assigned to this matter shall work with Creditor Zehnaly to
7 facilitate the Orders of this Court;" and "[s]pecifically, The Trustee shall ensure that the tenants
8 currently leasing units at the Property shall be duly informed of the change of ownership and
9 provided adequate time and assistance in meeting their contractual duties, including payment
10 of rent." *Id.* The purported order bore the electronic signature of the undersigned United
11 States Bankruptcy Judge. *Id.* The purported order is bogus, as demonstrated by at least the
12 following facts: the purported order is not shown on the docket of this case; the docket number
13 of 256 for this purported order is false because the case docket reflects another document,
14 Declaration of Pamela Muir in Support of the Third Interim Application of Approval of
15 Compensation and Expense Reimbursement of Baker & Hostetler LLP filed by Debtor Sarkis
16 Investments Company, the day before on the date of July 18, 2016, as docket number 463;
17 and the order referred to the "Trustee," though no trustee had been appointed in this Chapter
18 11 bankruptcy case. *Id.* According to Creditor Zehnaly, in his declaration in support of the
19 motion, a copy of this purported order was hand-delivered to him by a purported court courier
20 who he later discovered was Ohanian's wife, Silva Sevljan. *Id.* At about the same time,
21 Creditor Zehnaly received oral and written advice from his attorney, Ohanian, that he was
22 required to deposit or pay funds to protect his interest in the Sarkis Properties and to ensure
23 that he could acquire them free and clear of liens. *Id.* Also at about the same time, Creditor
24 Zehnaly received a telephone call from a purported court clerk using the name "Debra" or
25 "Barbara" regarding the purported order. *Id.*

26 Creditor Zehnaly testified that on or about July 25, 2016, he received a hand-delivered
27 copy of a purported letter from Alvin Mar, Chapter 11 Trustee to Shant Ohanian, Esq., in this
28 case dated July 25, 2016, purportedly transmitted by facsimile. *Declaration of Ghazar*

1 *Zehnaly*, attached to Motion, ECF 589 at 12-15 and Exhibit 9 attached thereto. The purported
2 letter stated that Mr. Mar as the Chapter 11 Trustee was assigned to this case and pursuant to
3 the court's purported order of July 21, 2016 "granting the properties formerly owned by
4 SARKIS INVESTMENTS COMPANY, LLC, to your client, GHAZAR ZEHNALY" that Mr. Mar
5 had initially set up an appointment "to meet with the concerned parties at the property location
6 to finalize the exchange of applicable documents, deposit checks, rent checks and keys," but
7 due to Mr. Mar's "various involvements with other matters, and the recent date of the order, my
8 office has not concluded all the necessary paperwork." *Id.* Thus, according to this purported
9 letter, Mr. Mar had requested additional time to conclude his work and would in the next week
10 contact Mr. Ohanian to schedule a new appointment. *Id.* The purported order bore the
11 signature of Alvin Mar as "Trustee." *Id.* The purported order is bogus, as demonstrated by the
12 fact that no one, including Mr. Mar, has been appointed as a Chapter 11 trustee in this case,
13 which requires an order pursuant to 11 U.S.C. § 1104 reflected on the docket of this case, and
14 no such order is shown on the case docket. Moreover, the purported letter refers to a bogus
15 order, that is, the purported order described above which purportedly grants Creditor Zehnaly
16 possession of all of Debtor's assets. According to Creditor Zehnaly, in his declaration in
17 support of the motion, his attorney, Ohanian, made both oral and written representations to
18 him that he had prevailed in this case on his dispute with Debtor to acquire its assets, and it
19 appears that this purported letter is one of the written misrepresentations that Ohanian made
20 to him. *Id.* At trial, Creditor Zehnaly clarified that Ohanian gave him a copy of this purported
21 letter. *Testimony of Creditor Zehnaly, Audio Recording of Trial, February 2, 2019, 10:37 a.m.*

22 On September 15, 2016, August 24, 2017, December 6, 2017, and January 1, 2018,
23 counsel for Debtor filed a Bankruptcy Case Status Report for the status conferences in the
24 underlying bankruptcy case set for September 21, 2016, August 30, 2017, December 13, 2017
25 and January 28, 2018 respectively. ECF 471, filed on September 15, 2016; ECF 551, filed on
26 August 24, 2017; ECF 555, filed on December 6, 2017; and ECF 557, filed on January 1,
27 2018. Each of these status reports was addressed on page 1 to the undersigned United
28 States Bankruptcy Judge and "ALL INTERESTED PARTIES AND/OR THEIR COUNSEL OF

1 RECORD," and the proof of service of each status report indicated that counsel for Debtor
2 mailed copies of the each status report on September 15, 2016, August 24, 2017, December
3 6, 2017 and January 1, 2018 to serve: (1) counsel for Creditor Zehnaly, Ohanian, at his office
4 address; and (2) Creditor Zehnaly himself at his mailing address at 4326 Fairlawn Drive, La
5 Canada, CA 91101-3115. *Id.* The subject matter of the each of these status reports related to
6 the bankruptcy case in general relating to Debtor's motion for structured dismissal and fee
7 applications of its attorneys and did not refer to Debtor's motion objecting to Creditor Zehnaly's
8 claim or the order thereon filed and entered on June 3, 2016. *Id.*

9 Creditor Zehnaly testified that on or about October 7, 2016, he received a hand-
10 delivered copy of a purported order of the court in this case entitled "Order: Approving
11 Settlement Terms and Setting Final Schedule for Dismissal of Bankruptcy and Creditor
12 Payments," which bore a file-stamped date of entry of October 7, 2016 and a docket entry
13 number of 397. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12-15 and
14 Exhibit 10 attached thereto. The purported order stated that the motion of Creditor Zehnaly
15 and Creditor LNR Partners, LLC was granted; that "[t]he settlement agreement reached
16 between Creditor Zehnaly and LNR Partners, LLC be reflected in the official records of this
17 Court"; that "[u]nder the agreement, the principal amount of the first mortgage interested [sic]
18 held by LNR will be reduced from \$11,245,114.56 to \$4,245,114.56, commencing on October
19 11, 2016"; and that "[t]he interest rate shall remain 2.25% over a fixed 30-year period." *Id.*
20 This purported order further provided that "[o]n October 12, 2016, all monies due Creditor
21 Zehnaly and the properties commonly known as 3550 Porsche Way, 3640 Porsche Way, 3660
22 Porsche Way, 3700 Inland Empire Boulevard, and 3760 Inland Empire Boulevard, Ontario, CA
23 91764 (collectively, the 'Property') be released to Creditor Zehnaly," but that "prior to the
24 release of any properties, Creditor Zehnaly is required to pay the outstanding mortgage
25 balance of \$42,983.78 previously due by October 1, 2016." *Id.* The purported order bore the
26 electronic signature of the undersigned United States Bankruptcy Judge. *Id.* The purported
27 order is bogus, as demonstrated by at least the following facts: the purported order is not
28 shown on the docket of this case; the docket number of 397 for this purported order is false

1 because the case docket reflects another document, Debtor's status report for the status
2 conference on September 21, 2016, Docket No. 471, which was the last filed document in the
3 case before the filing date of the purported order of October 7, 2016; and the order referred to
4 the "Trustee," though no trustee had been appointed in this Chapter 11 bankruptcy case. *Id.*
5 According to Creditor Zehnaly, in his declaration in support of the motion, a copy of this
6 purported order was hand-delivered to him by a purported court courier who he later
7 discovered was Ohanian's wife, Silva Sevljan. *Id.* At about the same time, Creditor Zehnaly
8 received oral and written advice from his attorney, Ohanian, that he was required to deposit or
9 pay funds to protect his interest in the Sarkis Properties and to ensure that he could acquire
10 them free and clear of liens. *Id.* Also at about the same time, Creditor Zehnaly received a
11 telephone call from a purported court clerk using the name "Debra" or "Barbara" regarding the
12 purported order. *Id.*

13 In connection with this purported order of October 7, 2016, Creditor Zehnaly testified
14 that he received a copy of a purported Form 4102B, Notice of Cure Payment, that reflects the
15 amount of the purported outstanding mortgage balance of \$42,983.78 that he purportedly had
16 to pay pursuant to the purported order of October 7, 2016. *Declaration of Ghazar Zehnaly*,
17 attached to Motion, ECF 589 at 12-15 and Exhibit 11 attached thereto. The purported Form
18 4102B, Notice of Cure Payment, appears to be a bankruptcy case related form. According to
19 Creditor Zehnaly, in his declaration in support of the motion, his attorney, Ohanian, made both
20 oral and written representations to him that he had prevailed in this case on his dispute with
21 Debtor to acquire its assets, and it appears that this purported notice of cure payment is one of
22 the written misrepresentations that Ohanian made to him. *Id.*

23 Creditor Zehnaly testified that on or about October 26, 2016, he received a hand-
24 delivered copy of a purported order of the court in this case entitled "Order: Approving Final
25 Settlement Terms Between Creditors Zehnaly and LNR Partners, LLC.," which bore a file-
26 stamped date of entry of October 26, 2016 and a docket entry number of 399. *Declaration of*
27 *Ghazar Zehnaly*, attached to Motion, ECF 589 at 12-15 and Exhibit 12 attached thereto. The
28 purported order stated that the motion of Creditor Zehnaly and Creditor LNR Partners, LLC

1 was granted; that "[t]he settlement agreement reached between Creditor Zehnaly and LNR
2 Partners, LLC be reflected in the official records of this Court"; that "[u]nder the agreement,
3 LNR agrees to convey a full dead [sic] of trust for the properties listed below in return for a
4 payment of \$1,298,940.00 made by Creditor Zehnaly"; and that "[t]he properties commonly
5 known as 3550 Porsche Way, 3640 Porsche Way, 3660 Porsche Way, 3700 Inland Empire
6 Boulevard, and 3760 Inland Empire Boulevard, Ontario, CA 91764 (collectively, the 'Property')
7 shall be conveyed to Creditor Zehnaly, free of any liens and encumbrances, after both parties
8 follow the required procedures, as required under California Civil Code Section 1091-1099,
9 including but not limited to: representations and warranties, environmental and hazardous
10 waste provisions (disclosure of known conditions or defects), relevant zoning and land use
11 issues, and Internal Revenue Code Section 1031 exchange provisions." *Id.* With respect to
12 the implementation of the property transfer, the purported order further provided that "Creditor
13 Zehnaly's Attorney [i.e., Ohanian] shall be temporarily appointed as the trustee for the Property
14 conveyance, and is ordered to work in conjunction with this Court to ensure that all required
15 documents and materials are submitted in a timely manner"; that "[t]he parties are required to
16 complete the sale no later than November 11, 2016"; and that "[t]he court shall be notified of
17 any potential delays." *Id.* The purported order bore the electronic signature of the
18 undersigned United States Bankruptcy Judge. *Id.* The purported order is bogus, as
19 demonstrated by at least the following facts: the purported order is not shown on the docket of
20 this case; the docket number of 399 for this purported order is false because the case docket
21 reflects another document, the court's order taking off calendar the third interim fee application
22 of Baker & Hostetler, LLC, Debtor's general bankruptcy counsel, filed about a week earlier on
23 the date of October 20, 2016 as docket number 477, which was the last filed document in the
24 case before the filing date of the purported order of October 26, 2016; and the order referred to
25 the "temporary appointment" of Ohanian, Creditor Zehnaly's attorney, as a property transfer
26 trustee, which is completely fraudulent as such appointment is not reflected in any order of the
27 court entered on the case docket. *Id.* According to Creditor Zehnaly, in his declaration in
28 support of the motion, a copy of this purported order was hand-delivered to him by a purported

1 court courier who he later discovered was Ohanian's wife, Silva Sevljan. *Id.* At about the
2 same time, Creditor Zehnaly received oral and written advice from his attorney, Ohanian, that
3 he was required to deposit or pay funds to protect his interest in the Sarkis Properties and to
4 ensure that he could acquire them free and clear of liens. *Id.* Also at about the same time,
5 Creditor Zehnaly received a telephone call from a purported court clerk using the name
6 "Debra" or "Barbara" regarding the purported order. *Id.*

7 Creditor Zehnaly testified that on or about December 27, 2016, he received a hand-
8 delivered copy of a purported order of the court in this case entitled "Tentative Order: Granting
9 Creditor Zehnaly's Request for Supplemental Award of Real Property," which bore a file-
10 stamped date of entry of December 27, 2016 and a docket entry number of 403. *Declaration*
11 *of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12-15 and Exhibit 13 attached thereto.
12 The purported order stated that the motion of Creditor Zehnaly was granted; that "[b]ased upon
13 findings of this Court in the corresponding bankruptcy matter, and good cause appearing
14 therefor, that the real property located at 11321 South Main Street, Los Angeles, CA 90006
15 ("Main St. property"), be transferred in fee simple absolute to Creditor Zehnaly"; that "[t]he
16 value of the property is set at \$2,100,000.00 and shall be deemed as full and fair payment for
17 actual damages suffered by Creditor Zehnaly"; and that "[w]ithin 48 hours from this tentative
18 order, the Court shall release a binding order specifying the release of the Main St. property
19 and all other payments and releases connected to the properties located in Ontario, CA." *Id.*
20 The purported order bore the electronic signature of the undersigned United States Bankruptcy
21 Judge. *Id.* The purported order is bogus, as demonstrated by the fact that the purported order
22 is not shown on the docket of this case; the docket number of 403 for this purported order is
23 false because the case docket reflects another document, Debtor's monthly operating report
24 number 40 for November 2016 filed about two weeks earlier on the date of December 15,
25 2016, as docket number 491, which was the last filed document in the case before the filing
26 date of the purported order of December 27, 2016. *Id.* According to Creditor Zehnaly, in his
27 declaration in support of the motion, a copy of this purported order was hand-delivered to him
28 by a purported court courier who he later discovered was Ohanian's wife, Silva Sevljan. *Id.* At

1 about the same time, Creditor Zehnaly received oral and written advice from his attorney,
2 Ohanian, that he was required to deposit or pay funds to protect his interest in the Sarkis
3 Properties and to ensure that he could acquire them free and clear of liens. *Id.* Also at about
4 the same time, Creditor Zehnaly received a telephone call from a purported court clerk using
5 the name "Debra" or "Barbara" regarding the purported order. *Id.*

6 Creditor Zehnaly testified that on or about February 17, 2017, he received a hand-
7 delivered copy of a purported order of the court in this case entitled "Order: Amending Final
8 Bankruptcy Discharge Order," which bore a file-stamped date of entry of February 17, 2017
9 and a docket entry number of 427. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF
10 589 at 12-15 and Exhibit 14 attached thereto. The purported order stated that the court
11 ordered on its own motion that "[t]he bankruptcy matter In re. SARKIS INVESTMENTS
12 COMPANY, LLC be hereby discharged and all monies and properties owed to Creditors be
13 disbursed after all outstanding fees and tax liabilities have been satisfied"; that "Creditor,
14 Zehnaly provide payment to this court in the amount of \$69,544.23 for an amended 2015 tax
15 liability for the properties commonly known as 3550 Porsche Way, 3640 Porsche Way, 3660
16 Porsche Way, 3700 Inland Empire Boulevard, and 3760 Inland Empire Boulevard, Ontario, CA
17 91764 (collectively, the 'Property')"; and that "[t]his payment will satisfy all liabilities owed in
18 connection to the property by Creditor ZEHNALY and any and all corporate entities controlled
19 by Creditor ZEHNALY." *Id.* The purported order bore the electronic signature of the
20 undersigned United States Bankruptcy Judge. *Id.* The purported order is bogus, as
21 demonstrated by the fact that the purported order is not shown on the docket of this case; the
22 docket number of 427 for this purported order is false because the case docket reflects
23 another document, the court's order continuing hearings on the final fee application of Baker &
24 Hostetler, LLP, Debtor's general bankruptcy counsel; and Debtor's motion for conditional
25 dismissal filed about a month earlier on the date of January 23, 2017 as docket number 497,
26 was the last filed document in the case before the filing date of the purported order of February
27 17, 2017. *Id.* According to Creditor Zehnaly, in his declaration in support of the motion, a copy
28 of this purported order was hand-delivered to him by a purported court courier who he later

1 discovered was Ohanian's wife, Silva Sevljan. *Id.* This particular purported order had a
2 purported notice of entered order and service list indicating service by the court by personal
3 delivery on Creditor Zehnaly at his address as well as Debtor and Creditor LNR Partners, LLC.
4 *Id.* At about the same time, Creditor Zehnaly received oral and written advice from his
5 attorney, Ohanian, that he was required to deposit or pay funds to protect his interest in the
6 Sarkis Properties and to ensure that he could acquire them free and clear of liens. *Id.* Also at
7 about the same time, Creditor Zehnaly received a telephone call from a purported court clerk
8 using the name "Debra" or "Barbara" regarding the purported order. *Id.*

9 Creditor Zehnaly testified that on or about February 28, 2017, he received a hand-
10 delivered copy of a purported order of the court in this case entitled "Order: Denying Sarkis
11 Investments Company, LLC's Motion to Reverse on Appeal and for Sanctions," which bore a
12 file-stamped date of entry of February 28, 2017 and a docket entry number of 428. *Declaration*
13 *of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12-15 and Exhibit 15 attached thereto.
14 The purported order stated that the court denied an emergency motion of Debtor "requesting a
15 reversal of the previous order granting Creditor ZEHNALY various properties and monies
16 under Proof of Claim 7-1 filed individual Ghazar Zehnaly." *Id.* This purported order recited the
17 purported issue on appeal, stating:

18 SARKIS INVESTMENTS COMPANY, LLC argued in its motion that
19 the proof of claim filed, was done so improperly since Ghazar
20 Zehnaly, as an individual, did not have standing to bring a claim.
21 Rather, SARKIS INVESTMENTS argued that the corporation which
22 had brought the offer to purchase the properties commonly known
23 as 3550 Porsche Way, 3640 Porsche Way, 3660 Porsche Way,
3700 Inland Empire Boulevard, and 3760 Inland Empire Boulevard,
Ontario, CA 91764 (collectively, the 'Property'), was the only entity
permitted to bring a proof of claim since it was still a legal entity at
the time of filing.

24 *Id.* The purported order said that the court had heard oral arguments on the emergency
25 motion, which were purportedly made by Debtor's counsel, Ashley McDow, and Creditor
26 Zehnaly's attorney, Ohanian, on February 27, 2017, and "Mr. Ohanian presented evidence that
27 any error in not including the corporation in the proof of claim was not due to a deliberate act
28 by Creditor Zehnaly and thus should not set forth a new permissible period for appeal since the

1 appeals period has already expired." *Id.* The purported order stated that the court held "that
2 Mr. Ohanian has carried his burden of proof in establishing Creditor Zehnaly shall not be held
3 liable for the failure to bring a proof of claim on behalf of the corporation and SARKIS
4 INVESTMENTS COMPANY, LLC's motion is hereby denied." *Id.* The purported order bore
5 the electronic signature of the undersigned United States Bankruptcy Judge. *Id.* The
6 purported order is bogus, as demonstrated by the fact that it is not shown on the docket of this
7 case; the docket number of 428 for this purported order is false because the case docket
8 reflects another document, Debtor's monthly operating report number 42 for the month of
9 January 2017 filed about a week earlier on the date of February 20, 2017, as docket number
10 504, which was the last filed document in the case before the filing date of the purported order
11 of February 27, 2017. *Id.* According to Creditor Zehnaly, in his declaration in support of the
12 motion, a copy of this purported order was hand-delivered to him by a purported court courier
13 who he later discovered was Ohanian's wife, Silva Sevlian. *Id.* This particular purported order
14 had a purported notice of entered order and service list indicating service by the court by
15 personal delivery on Creditor Zehnaly at his address as well as Debtor and Creditor LNR
16 Partners, LLC. *Id.* At about the same time, Creditor Zehnaly received oral and written advice
17 from his attorney, Ohanian, that he was required to deposit or pay funds to protect his interest
18 in the Sarkis Properties and to ensure that he could acquire them free and clear of liens. *Id.*
19 Also at about the same time, Creditor Zehnaly received a telephone call from a purported court
20 clerk using the name "Debra" or "Barbara" regarding the purported order. *Id.*

21 Creditor Zehnaly testified that on or about March 2, 2017, he received a hand-delivered
22 copy of a purported order of the court in this case entitled "Order: Denying Sarkis Investments
23 Company, LLC's Motion to Appeal and Amending Tax Liabilities for Properties," which bore a
24 file-stamped date of entry of March 2, 2017 and a docket entry number of 429 on page 1 of the
25 order and 427 on page 2 of the order. *Declaration of Ghazar Zehnaly*, attached to Motion,
26 ECF 589 at 12-15 and Exhibit 16 attached thereto. The purported order stated that it related to
27 the purported order of February 28, 2016 denying the emergency motion to appeal "this
28 Court's grant of various properties and monies to Creditor ZEHNALY" and that "[t]he Debtor

1 asked this Court to reconsider the order under Federal Rules of Evidence 4(3)(a) or in the
2 alternative reconsider the current outstanding tax liabilities of Sarkis Investments connected to
3 the properties now owned by Creditor ZEHNALY, due to the fact that previous liabilities
4 calculated and apportioned were done with the understanding that Creditor ZEHNALY acted
5 as an individual rather than in his capacity as a director of a corporation." *Id.* This purported
6 order further stated that "Creditor ZEHNALY filed a counter-motion arguing that if Creditor
7 ZEHNALY is required to make any supplemental tax payments, Creditor ZEHNALY should
8 receive a tax indemnification certificate to recoup any payments due to the fact that any 2015
9 unpaid tax liabilities were amassed while SARKIS INVESTMENTS COMPANY, LLC was still
10 the owner of the properties." *Id.* The purported order provides that "Debtor SARKIS
11 INVESTMENTS COMPANY, LLC'S motion to reconsider the motion and grant Debtor right to
12 appeal is **denied**"; that "Creditor ZEHNALY make a supplemental tax payment in the amount
13 of \$65,867.10 for outstanding tax liabilities for the year 2015 on properties commonly known as
14 3550 Porsche Way, 3640 Porsche Way, 3660 Porsche Way, 3700 Inland Empire Boulevard,
15 and 3760 Inland Empire Boulevard, Ontario, CA 91764 (collectively, the 'Property')"; that
16 "Creditor ZEHNALY'S motion to receive a tax indemnification certificate is **granted**"; and that
17 "[t]his Court shall provide Creditor ZEHNALY a Tax Indemnification Certificate under Treas.
18 Reg. Section 1.61-14(a) for any and all taxes paid for the period preceding June 30, 2016." *Id.*
19 The purported order bore the electronic signature of the undersigned United States Bankruptcy
20 Judge. *Id.* The purported order is bogus, as demonstrated by the fact that it is not shown on
21 the docket of this case; the docket numbers of 429 and 427 (which was the docket number of
22 the previous bogus order) for this purported order is false because the case docket reflects
23 that another document, Debtor's supplemental brief in support of conditional dismissal, was
24 filed the day before on the date of March 1, 2017 as docket number 505, which was the last
25 filed document in the case before the filing date of the purported order of March 2, 2017. *Id.*
26 According to Creditor Zehnaly, in his declaration in support of the motion, a copy of this
27 purported order was hand-delivered to him by a purported court courier who he later
28 discovered was Ohanian's wife, Silva Sevlian. *Id.* This particular purported order had a

1 purported notice of entered order and service list indicating service by the court by personal
2 delivery on Creditor Zehnaly at his address as well as Debtor and Creditor LNR Partners, LLC.
3 *Id.* At about the same time, Creditor Zehnaly received oral and written advice from his
4 attorney, Ohanian, that he was required to deposit or pay funds to protect his interest in the
5 Sarkis Properties and to ensure that he could acquire them free and clear of liens. *Id.* Also at
6 about the same time, Creditor Zehnaly received a telephone call from a purported court clerk
7 using the name "Debra" or "Barbara" regarding the purported order. *Id.*

8 According to Creditor Zehnaly, during the time period from April 2016 to September
9 2017, Ohanian's wife, Silva Sevljan made numerous telephone calls to him (2-3 times a week
10 on average) with a "spoofed" telephone number which showed the identification of the
11 Bankruptcy Court. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 15. Also,
12 according to Creditor Zehnaly, Sevljan claimed that she was a court clerk named "Debra" or
13 "Barbara," calling from the Bankruptcy Court, and advising him regarding the status of the
14 Bankruptcy Proceedings, which confirmed Ohanian's oral representations to him, and written
15 representations in the forged court orders and documents. *Id.* Moreover, according to
16 Creditor Zehnaly, "Debra" or "Barbara" confirmed to him that the Bankruptcy Court was
17 awarding the Sarkis Properties to him, and she also explained the reasons why his ability to
18 acquire the Sarkis Properties had been delayed and assured him that such delays were due to
19 court procedures which needed to be followed to ensure that clean and proper title would be
20 awarded to him. *Id.*

21 According to Creditor Zehnaly, after Ohanian represented orally and in writing to him
22 that Sarkis's appeal had been denied in March 2017, between April 2017 and September
23 2017, Ohanian and Sevljan orally explained to him on numerous occasions that there were still
24 lien issues that needed to be taken care of and addressed for the Main Street Property,
25 another property owned by Debtor that Creditor Zehnaly was interested in purchasing.
26 *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 15 and Exhibit 13 attached
27 thereto. Moreover, according to Creditor Zehnaly, Ohanian and Sevljan further represented to
28 him that they needed to serve notices on all the tenants at the Main Street Property, or

1 alternatively work out new leases with the tenants. *Id.* Furthermore, according to Creditor
2 Zehnaly, Ohanian and Sevljan explained that the reason for the delay in recording title to the
3 Sarkis Properties was that the Bankruptcy Court wanted all title issues to be taken care of at
4 the same time, and therefore, title would be recorded in his name for the Sarkis Properties
5 after lien and tenant issues were resolved regarding the Main Street Property, so that Creditor
6 Zehnaly would receive title to the Sarkis Properties and the Main Street Property at the same
7 time. *Id.*

8 Creditor Zehnaly testified that between 2016 and 2017, he paid Ohanian approximately
9 \$3,000,000.00 based on Ohanian's representations that the funds were necessary to protect
10 Creditor Zehnaly's interest in the Sarkis Properties and to pay for Ohanian's alleged legal
11 services. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 15; *Testimony of*
12 *Creditor Zehnaly, Audio Recording of Trial, February 2, 2019, 2:06-2:11 p.m.* Based on the
13 fake and forged court orders that Ohanian showed him, Creditor Zehnaly transferred these
14 funds to Ohanian by check and wire transfer to Ohanian's client trust account for the purported
15 purpose of satisfying Debtor's creditors to acquire the Sarkis Properties. *Id.* According to
16 Creditor Zehnaly, Ohanian came over to his house to meet with him and to give him the bogus
17 court orders and documents, and these visits of Ohanian were more frequent in 2016 than
18 before in the period between 2013 and 2016. *Testimony of Creditor Zehnaly, Audio Recording*
19 *of Trial, February 2, 2019, 11:07-11:08 a.m.* That is, Ohanian frequently came over to get
20 checks from Creditor Zehnaly. *Id.*, 10:59 a.m. A particularly striking example of this is the
21 bogus order that Ohanian gave Creditor Zehnaly purportedly appointing him as a temporary
22 trustee to handle the transfer of the Sarkis Properties to Creditor Zehnaly which included a
23 payment of \$1,298,940.00 to be made by Creditor Zehnaly to the secured lender, which
24 Ohanian would handle under the bogus order. *Declaration of Ghazar Zehnaly*, attached to
25 Motion, ECF 589 at 12-15 and Exhibit 12 attached thereto. Asked on cross-examination
26 whether he had given such large sums to an attorney before and why he gave such large
27 sums to Ohanian, Creditor Zehnaly answered that he had trusted Ohanian. *Id.*

1 As discussed above, according to Creditor Zehnaly, he did not know of the court's order
2 of June 2016 disallowing his proof of claim or of Debtor's status reports describing the order to
3 show cause proceedings because he did not receive copies of the court's orders or other
4 bankruptcy case-related documents. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF
5 589 at 11-15 and Exhibits 1-16 attached thereto; *Testimony of Creditor Zehnaly, Audio*
6 *Recording of Trial, February 2, 2019, 2:00-2:04 p.m, 2:17- 2:18 p.m.* Creditor Zehnaly
7 suspected that Ohanian had intercepted his mail because his mailbox at his house was on the
8 street and susceptible of theft. *Testimony of Creditor Zehnaly, Audio Recording of Trial,*
9 *February 2, 2019,. 2:00-2:03 p.m., 2:17-2:18 p.m.* Although Creditor Zehnaly admitted at trial
10 that he did not observe Ohanian intercepting his mail, his testimony is credible because in
11 order for Ohanian's scheme to induce Creditor Zehnaly to transfer large sums of money to him
12 under the ruse that the Bankruptcy Court was requiring payment of Debtor's creditors for
13 Creditor Zehnaly to acquire the Sarkis Properties, Creditor Zehnaly had to be kept in the dark
14 about the actual court proceedings, including the order disallowing his proof of claim and the
15 order to show cause proceedings. Creditor Zehnaly's testimony about the frequent visits of
16 Ohanian and the imposter court courier to deliver the fabricated and forged court orders and
17 documents and the frequent calls by the imposter court clerk to deliver false reports about the
18 status of the bankruptcy court proceedings indicate the extensive efforts that Ohanian needed
19 to take to induce Creditor Zehnaly to transfer the large sums of money to him. Ohanian's
20 scheme would not have worked if the true case information got through to Creditor Zehnaly,
21 who would not have given Ohanian all the money that he did.

22 **D. Ohanian's State Bar Proceedings**

23 On June 28, 2017, the State Bar Court of California, Hearing Department, Los Angeles,
24 filed its Decision and Order of Involuntary Inactive Enrollment in the Matter of Shant Ohanian,
25 Case Numbers 16-O-12139-CV and 16-O-12892-CV. *Declaration of Ghazar Zehnaly*,
26 attached to Motion, ECF 589 at 12-15 and Exhibit 17 attached thereto. This decision and
27 order of the State Bar Court is a public matter and is of public record and provided for the
28 involuntarily inactive enrollment of Ohanian, Creditor Zehnaly's attorney in this case. *Id.* The

1 website of the State Bar of California indicates that Ohanian was disbarred, effective
2 December 2, 2017, and the court takes judicial notice of this fact and the decision and order of
3 the State Bar Court pursuant to Federal Rule of Evidence 201.¹ State Bar of California
4 website, at <http://members.calbar.ca.gov/fal/Licensee/Detail/281652>, accessed on April 25,
5 2019. According to the State Bar Court's decision and order, the Office of Chief Trial Counsel
6 of the State Bar of California filed a petition for disbarment against Ohanian, and the State Bar
7 Court entered Ohanian's default because he failed to participate in this disciplinary proceeding
8 after receiving adequate notice and an opportunity to be heard. *Id.* The State Bar Court found
9 Ohanian culpable of seven counts of moral turpitude and two counts of failing to perform with
10 competence in two client matters. *Id.* In light of Ohanian's default, the State Bar Court
11 deemed the factual allegations of the charging document to be admitted and found that the
12 factual allegations supported findings that Ohanian was culpable as charged; that Ohanian
13 repeatedly failed to perform any services for which he was retained on behalf of his clients in
14 the two client matters at issue in the proceeding; that in one matter, Ohanian committed acts of
15 moral turpitude and dishonesty by stating to his client that her claim was settled for \$25,000
16 when he was grossly negligent in not knowing that his statement was false; that he provided
17 the client with a document that he represented as a settlement agreement with her former
18 employer, which contained a purported signature of the employer's attorney, but he fabricated
19 the document and forged the signature; that he provided the client with another document he
20 represented as a notice of entry of default, which he also fabricated; that he advised his client
21 that he made a wire transfer of \$125,000 into her personal bank account when he was grossly
22 negligent in not knowing that he had not made such a transfer; that he provided the client with
23 a copy of a purported settlement check from the client's former employer in the amount of
24 \$137,025.58 that he had fabricated and was at least grossly negligent in not knowing that the

25
26 ¹ "Under Rule 201, the court can take judicial notice of '[p]ublic records and government documents available from
27 reliable sources on the Internet,' such as websites run by governmental agencies." *Gerritsen v. Warner Bros.*
28 *Entertainment Inc.*, 112 F.Supp.3d 1011, 1033-1034 (C.D. Cal. 2015) (citing *inter alia*, *Hansen Beverage Co. v.*
Innovation Ventures, LLC, No. 08-CV-1166-IEG, 2009 WL 6597891, *1 (S.D. Cal. 2009); *Daniels-Hall v. National*
Education Association, 629 F.3d 992, 999 (9th Cir.2010) (taking judicial notice of information on the websites of
two school districts because they were government entities); *Paralyzed Veterans of America v. McPherson*, No. C
06-4670, 2008 WL 4183981, *5 (N.D. Cal. Sept. 8, 2008) ("Information on government agency websites has often
been treated as properly subject to judicial notice")).

1 case had not been settled; that in the other client matter, he stated to the client that her claim
2 against her former employer had been settled for \$77,000, and he was grossly negligent in not
3 knowing that his statement was false; and that he provided the client with a copy of a
4 purported settlement check from her former employer in the amount of \$67,232.45, which he
5 had fabricated and was at least grossly negligent in not knowing that the case had not settled.
6 *Id.* Creditor Zehnaly did not know of the State Bar Court's decision and order when it filed it on
7 June 28, 2017. *Id.*

8 **E. Creditor Zehnaly's Discovery of Ohanian's Fraud and His "Petition" and**
9 **Malpractice Lawsuit against Ohanian**

10 According to Creditor Zehnaly, he later discovered that all of the court orders and
11 documents that Ohanian provided him were fake and forged. *Declaration of Ghazar Zehnaly*,
12 attached to Motion, ECF 589 at 15. In his declaration in support of his motion for
13 reconsideration, Creditor Zehnaly stated that he learned in late 2017 that the Bankruptcy Court
14 did not award him the Sarkis Properties or the opportunity to acquire the Sarkis Properties. *Id.*
15 Furthermore, Creditor Zehnaly testified in his declaration that according to the documents he
16 was able to obtain online, Ohanian did file a proof of claim on his behalf, but acknowledged,
17 however, that on June 3, 2016 the court issued an order disallowing his proof of claim against
18 Debtor in its entirety. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 15 and
19 Exhibits 4 and 18 attached thereto. At trial, Creditor Zehnaly clarified that he discovered that
20 Ohanian had defrauded him in September 2017 and that he found out that the purported court
21 orders and documents that Ohanian gave him were fake and forged after visiting the court and
22 being shown the real court orders and documents by court personnel. *Testimony of Creditor*
23 *Zehnaly, Audio Recording of Trial, February 2, 2019, 10:50 a.m. and 11:20-11:25 a.m.* What
24 led Creditor Zehnaly to suspect Ohanian was that he had a criminal law matter regarding one
25 of his properties brought by the City of Los Angeles, and he asked Ohanian to represent him
26 and Ohanian told Creditor Zehnaly that he was busy and Creditor Zehnaly should represent
27 himself. *Id.*, 11:12 a.m. Although Creditor Zehnaly had not known that Ohanian had been
28 disciplined and involuntarily enrolled as inactive by that time, Creditor Zehnaly became

1 suspicious and went to the Bankruptcy Court to see the real court orders and documents in
2 this case. *Id.*, 11:09 a.m. After learning that Ohanian had defrauded him, Creditor Zehnaly
3 attempted to file a police report with the Pasadena Police Department, who referred him to the
4 Los Angeles County Sheriff. *Id.*

5 On or about December 25, 2017, Creditor Zehnaly and his son, Armen Zehnaly, sent an
6 application for reimbursement from the State Bar of California Client Security Fund for
7 compensation from losses they allegedly incurred from being represented by Ohanian, and by
8 letter dated January 3, 2018, the State Bar of California Client Security Fund Unit
9 acknowledged receipt of this application. *Letter from State Bar of California Client Security*
10 *Fund Unit to Ghazar Zehnaly and Armen Zehnaly, re: Your Application for Reimbursement*
11 *from the Client Security Fund, dated June 19, 2018*, Debtor's Exhibit B; *Testimony of Creditor*
12 *Zehnaly, Audio Recording of Trial, February 2, 2019, 10:50 a.m.* In his application for
13 reimbursement, Creditor Zehnaly alleged that the loss occurred from July 2013 to September
14 2017 and acknowledged that he discovered the loss in September 2017. *Id.* Creditor Zehnaly
15 also stated that he had filed a complaint about Ohanian with the State Bar of California on
16 November 7, 2017. *Id.*; *Testimony of Creditor Zehnaly, Audio Recording of Trial, February 2,*
17 *2019. 2:05 p.m.*

18 On January 23, 2018, Ohanian filed his Declaration of Shant Ohanian, stating that he
19 was a former attorney at law licensed to practice in the State of California; that he was no
20 longer authorized to practice law; that he was counsel of record for Creditor Ghazar Zehnaly in
21 this case; that he had filed a proof of claim on behalf of Creditor Zehnaly denominated as Proof
22 of Claim No. 7-1 on November 12, 2013; and that "[d]ue to my negligence and inadequate
23 representation of Claimant Zehnaly, this Court dismissed Zehnaly's rightful claim." ECF 558,
24 filed on January 23, 2018. No notice of hearing accompanied this document. *Id.* No proof of
25 service was filed for this document, and there is no indication of service of a judge's copy on
26 Judge Kwan presiding over this case as required by Local Bankruptcy Rule 5005-2 or on
27 Creditor Zehnaly. *Id.* However, the court's notice of electronic filing (NEF) of January 23, 2018
28

1 for this document indicated that electronic notice of this document would be electronically
2 mailed to electronic notice parties, including counsel for Debtor. *Id.*

3 On February 2, 2018, Creditor Zehnaly filed in this case a *Petition and Declaration of*
4 *Ghazar Zehnaly*. ECF 560, filed on February 2, 2018. In this document addressed to the
5 attention of Judge Kwan, Creditor Zehnaly asserted that he was a victim of the deceitful and
6 fraudulent acts of his former attorney Ohanian; that Ohanian had been lying to him and not
7 appearing in court to represent him; that Ohanian showed him fake documents, including
8 forged orders of this court; and that Ohanian's female associate made phone calls to him,
9 alleging the caller was from this court, to verify the authenticity of the fake court documents.
10 *Id.* At the end of this document, Creditor Zehnaly is his prayer for relief stated: "I, Ghazar
11 Zehnaly, hereby plead to the Honorable Judge Robert Kwan in the United States Bankruptcy
12 Court to grant me an opportunity to find and hire another attorney to represent me properly in
13 this case." *Id.* Although the document is called a "declaration," there is no declaration under
14 penalty of perjury as required by 28 U.S.C. § 1746(2). No notice of hearing accompanied this
15 document. *Id.* No proof of service was filed for this document when it was filed on February 2,
16 2018, and there is no indication of service of a judge's copy on Judge Kwan presiding over this
17 case as required by Local Bankruptcy Rule 5005-2 or on Creditor Zehnaly. *Id.* Creditor
18 Zehnaly admitted that he did not know what to do when filing the motion. *Testimony of*
19 *Creditor Zehnaly, Audio Recording of Trial, February 2, 2019. 10:52 a.m.*

20 The court's notice of electronic filing (NEF) of February 2, 2018 for the Petition
21 indicated that electronic notice of this document would be electronically mailed to electronic
22 notice parties, including counsel for Debtor. ECF 560, filed on February 2, 2018. A proof of
23 service was filed for this document on February 8, 2018, but the only service party listed on the
24 proof of service was counsel for Debtor by personal delivery. ECF 562, filed on February 8,
25 2018. The court's notice of electronic filing (NEF) of February 8, 2018 for this document
26 indicated that electronic notice of this document would be electronically mailed to electronic
27 notice parties, including counsel for Debtor. *Id.*

1 Creditor Zehnaly's Petition was handwritten and prepared by himself without the
2 assistance of an attorney. *Testimony of Creditor Zehnaly, Audio Recording of Trial, February*
3 *2, 2019. 10:45 a.m., 10:52-10:53 a.m.* Creditor Zehnaly testified that after he found out that
4 Ohanian had defrauded him, he consulted three or four attorneys, one of whom identified
5 himself as a bankruptcy attorney, but he did not retain any one of them because he "was not
6 convinced of their advice." *Id.*, 11:37 a.m.

7 On February 5, 2018, Creditor Zehnaly filed an "Amendment" of the petition and
8 declaration filed on February 2, 2018. ECF 561, filed on February 5, 2018. This amended
9 document is not materially different from the original document filed on February 2, 2018. *Id.*
10 No notice of hearing accompanied this document. *Id.* No proof of service was filed for this
11 document, and there is no indication of service of a judge's copy on Judge Kwan presiding
12 over this case as required by Local Bankruptcy Rule 5005-2 or on Creditor Zehnaly. *Id.*
13 However, the court's notice of electronic filing (NEF) of February 5, 2018 for this document
14 indicated that electronic notice of this document would be electronically mailed to electronic
15 notice parties, including counsel for Debtor. *Id.*

16 On June 19, 2018, Creditor Zehnaly, represented by counsel, filed a complaint for legal
17 malpractice, breach of contract, intentional and negligent misrepresentation, breach of
18 fiduciary duty and conversion against Ohanian, Ohanian's law firm, and Ohanian's wife in the
19 Superior Court of California, County of Los Angeles. Complaint for Legal Malpractice, Breach
20 of Contract, Intentional Misrepresentation, Negligent Misrepresentation, Breach of Fiduciary
21 Duty and Conversion, *Ghazar Zehnaly v. Shant Ohanian, et al.*, No. BC 710351 (Superior
22 Court of California, County of Los Angeles, complaint filed on June 19, 2018), Debtor's Exhibit
23 C. In the complaint, Creditor Zehnaly alleged that Ohanian and his wife conspired in a scheme
24 to defraud him of money during Ohanian's representation of him during this bankruptcy case in
25 the time period from April 2016 to September 2017 providing him with copies of fake court
26 orders and other documents with forged signatures of the undersigned United States
27 Bankruptcy Judge and a purported bankruptcy trustee with the purpose of inducing him to give
28 the funds to Ohanian purportedly necessary to perfect the transfer of the real property owned

1 by Debtor to him on grounds that Creditor Zehnaly prevailed in litigation with Debtor in this
2 case and, as a result, the court ordered Debtor to transfer the real property to Creditor
3 Zehnaly. *Id.* Creditor Zehnaly further alleged that as part of this scheme, Ohanian fabricated
4 and provided him with copies of fake court orders dated from April 2016 to March 2017
5 purportedly showing that he had prevailed in litigation in the bankruptcy case against Debtor,
6 which awarded him possession of Debtor's assets, including its real property, and ordering
7 Creditor Zehnaly to make payment of funds to the court in the case to perfect the transfer of
8 the real property to him, which Ohanian would receive and handle on behalf of Creditor
9 Zehnaly, though Ohanian actually converted the funds. *Id.* Creditor Zehnaly alleged that he
10 paid Ohanian approximately \$3,000,000 based on Ohanian's representations that the funds
11 were necessary to protect Zehnaly's interest in Debtor's real property and Zehnaly's other
12 properties in the Los Angeles and to pay Ohanian for his alleged legal services. *Id.* at 8.

13 **F. The Motion for Reconsideration**

14 On November 27, 2018, Creditor Zehnaly filed the Motion for Reconsideration of Order
15 Disallowing Creditor Ghazar Zehnaly's Proof of Claim 7-1 of Creditor Ghazar Zehnaly, which is
16 the matter before the court. ECF 589, filed on November 27, 2018. On December 6, 2018,
17 Debtor filed its opposition to the motion. ECF 593, filed on December 6, 2018. On December
18 12, 2018, Creditor Zehnaly filed his reply to Debtor's opposition. ECF 594, filed on December
19 12, 2018. On December 19, 2018, the court conducted an initial hearing on the motion for
20 reconsideration and set the matter for an evidentiary hearing on February 7, 2019 because
21 there were disputed issues of material fact.

22 On February 7, 2019, the court conducted a one-day trial on the contested matter of
23 Creditor Zehnaly's motion for reconsideration. Counsel for Debtor requested leave of court to
24 file a supplemental brief on the so-called "mailbox rule" because Creditor Zehnaly testified at
25 trial that he did not receive Debtor's status reports that counsel for Debtor mailed to him, and
26 on February 14, 2019, Debtor filed its Brief with Memorandum of Points and Authorities
27 Regarding Mailbox Rule filed by Debtor, ECF 599. On March 21, 2019, Creditor Zehnaly filed
28

1 a response to Debtor's supplemental brief. Supplemental Brief of Ghazar Zehnaly re Mailbox
2 Rule, ECF 602, filed on March 21, 2019.

3 Having considered the evidence received at trial and the written and oral arguments of
4 the parties, the papers and pleadings relating to this contested matter, the court renders its
5 ruling as set forth below.

6 II. DISCUSSION

7 In the Motion for Reconsideration, Creditor Zehnaly seeks reconsideration of the court's
8 order disallowing his proof of claim pursuant to Federal Rule of Civil Procedure Rule 59(e) and
9 11 U.S.C. § 502(j). ECF 589; *see also* Federal Rule of Bankruptcy Procedure 9023 (making
10 Federal Rule of Civil Procedure 59 applicable in bankruptcy cases).

11 Debtor in its opposition to Creditor Zehnaly's motion for reconsideration opposes the
12 motion on grounds that it is untimely under Federal Rule of Civil Procedure 59(e), it does not
13 meet the requirements of Federal Rule of Civil Procedure 60(b), the claim cannot be
14 reconsidered pursuant to 11 U.S.C. § 502(j), and Creditor Zehnaly's former attorney's alleged
15 malpractice does not provide a basis to set aside the court's order disallowing his claim.
16 *Debtor's Opposition*, ECF 593, filed on December 6, 2018, at 2-9.

17 A. Relief Cannot Be Granted Pursuant to Rule 59 Because the Motion is Untimely 18 Under Federal Rule of Civil Procedure 59(e).

19 Federal Rule of Civil Procedure 59(e) provides: "A motion to alter or amend a judgment
20 must be filed no later than 28 days after the entry of the judgment." Federal Rule of Civil
21 Procedure 59(e). Creditor Zehnaly filed his petition and declarations in February 2018 and his
22 motion for reconsideration on November 27, 2018, apparently seeking to alter or amend the
23 court's order disallowing his claim filed and entered on June 3, 2016. Creditor Zehnaly filed his
24 petition and declarations over 19 months after entry of the order disallowing his claim (and his
25 motion for reconsideration 9 months later), well beyond the 28-day period set forth in Rule
26 59(e). Thus, he may not rely upon Federal Rule of Civil Procedure 59 to alter or amend the
27 final order disallowing his claim because his motions to alter or amend this final order
28 disallowing his claim are untimely. To the extent that Creditor Zehnaly seeks relief under

1 Federal Rule of Civil Procedure 59, the court agrees with Debtor's opposition on this ground
2 and denies such relief.

3 **B. Cause Exists to Reconsider Under 11 U.S.C. § 502(j).**

4 Pursuant to 11 U.S.C. § 502(j), a claim that has been disallowed may be reconsidered
5 for cause. Federal Rule of Bankruptcy Procedure 3008 provides that "[a] party in interest may
6 move for reconsideration of an order allowing or disallowing a claim against the estate."
7 According to the United States Bankruptcy Appellate Panel of the Ninth Circuit, there is no time
8 limit to bringing a Rule 3008 motion. *In re Levoy*, 182 B.R. 827, 832 (9th Cir. BAP 1995).
9 Thus, Creditor Zehnaly's motion for reconsideration of the order disallowing his claim is not
10 untimely by reason of Federal Rule of Bankruptcy Procedure 3008.

11 However, Creditor Zehnaly must still show that his motion for reconsideration of the
12 order disallowing his claim is timely under Federal Rule of Bankruptcy Procedure 9024 and
13 Federal Rule of Civil Procedure 60(c). *See also Debtor's Opposition*, ECF 593 at 7-8. If a
14 motion to reconsider an order disallowing a claim is filed after the appeal period has expired, a
15 motion to reconsider should be treated as a motion for relief from judgment under Federal Rule
16 of Bankruptcy Procedure 9024. *In re Cleanmaster Industries, Inc.*, 106 B.R. 628, 630 (9th Cir.
17 BAP 1989). Federal Rule of Bankruptcy Procedure 9024 provides that Federal Rule of Civil
18 Procedure 60 sets forth the standards for reconsideration of claims and helps define "cause"
19 under 11 U.S.C. § 502(j). *Id.* Thus, Creditor Zehnaly's motion for reconsideration under 11
20 U.S.C. § 502(j) must be considered under the standards of Federal Rule of Civil Procedure 60.

21 "It has generally been held that a Rule 60(b) motion, at least in the context of
22 bankruptcy cases, is an extraordinary remedy and that the grant or denial of such motion may
23 be reviewed only for an abuse of discretion." 10 Levin and Sommer, *Collier on Bankruptcy*,
24 ¶ 9024.05 (16th ed. 2019). In general, the burden of proof is on the party bringing a Rule 60(b)
25 motion. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383 (1992). Thus, Creditor
26 Zehnaly has the burden of proof on his motion for reconsideration pursuant to Federal Rule of
27 Civil Procedure 60(b).

1 The grounds for relief for judgment pursuant to Federal Rule of Civil Procedure 60 are
2 set forth in Rule 60(b), which are: (1) mistake, inadvertence, surprise or excusable neglect;
3 (2) newly discovered evidence that, with reasonable diligence, could not have been discovered
4 in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or
5 extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void;
6 (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment
7 that has been reversed or vacated; or applying it prospectively is no longer equitable; and
8 (6) any other reason that justifies relief. Federal Rule of Civil Procedure 60(b)(1)-(6).

9 The grounds for relief asserted by Creditor Zehnaly do not fall within the specific
10 categories of Federal Rule of Civil Procedure 60(b)(1)-(5) since there is no claim of mistake,
11 inadvertence, surprise or excusable neglect, newly discovered evidence, fraud,
12 misrepresentation or misconduct by the opposing party, a void judgment, or a satisfaction,
13 release or discharge of judgment. Thus, Creditor Zehnaly's claim for relief would have to come
14 under the catch-all provision of Federal Rule of Civil Procedure 60(b)(6) for any other reason
15 that justifies relief.

16 Federal Rule of Civil Procedure 60(b)(6) is used sparingly as an equitable remedy to
17 prevent manifest injustice and is to be used only where extraordinary circumstances prevents
18 a party from taking timely action to prevent or correct an erroneous judgment. *Fantasyland*
19 *Video, Inc. v. Country of San Diego*, 505 F.3d 996, 1005 (9th Cir. 2007). In order for a movant
20 to obtain relief under Rule 60(b)(6), the movant must show extraordinary circumstances
21 justifying the reopening of a final judgment. *Ackermann v. United States*, 340 U.S. 193, 199
22 (1950). In determining whether extraordinary circumstances are present, the court may
23 consider "the risk of injustice to parties" and "the risk of undermining the public's confidence in
24 the judicial process." *Buck v. Davis*, 137 S.Ct. 759, 778 (2017) (quoting *Liljeberg v. Health*
25 *Services Acquisition Corp.*, 486 U.S. 847, 863-864 (1998)).

26 **1. Extraordinary Circumstances Justify Granting the Motion.**

27 In his motion for reconsideration, Creditor Zehnaly alleges that his failure to prosecute
28 his claim and the denial of the claim by the court "was the result of fraud and fake orders which

1 were forged by Zehnaly's former counsel, disbarred attorney, Shant Ohanian." *Motion*, ECF
2 589 at 2. According to Creditor Zehnaly, "Ohanian led Zehnaly to believe that the Court had
3 issued orders in Zehnaly's favor and was awarding Zehnaly with the right to acquire real
4 property owned by the Debtor Sarkis Investments Company, LLC subject to Zehnaly's
5 payment of taxes and liens totaling nearly \$3,000,000.00, all of which Zehnaly paid to
6 Ohanian." *Id.* As Creditor Zehnaly described in the motion, "Ohanian and his wife
7 accomplished this fraud by providing Zehnaly with no less than ten forged orders purportedly
8 signed by Judge Robert N. Kwan, including pacer file stamp numbers on the top of each page.
9 Ohanian even forged a letter from the Bankruptcy Trustee which misrepresented the status of
10 the proceedings to Zehnaly. Silva Sevlian called Zehnaly approximately 2-3 times per week
11 claiming that she was Judge Kwan's Bankruptcy Clerk and confirmed all of the false
12 representations contained in the court orders forged by Ohanian." *Id.* at 3.

13 Creditor Zehnaly gave testimony and submitted documentation in support of these
14 allegations. *See Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 1-16 and
15 Exhibits 1-18 attached thereto; *Zehnaly Testimony, Audio Recording, Trial, February 7, 2019*.
16 Creditor Zehnaly testified that he had retained Attorney Shant Ohanian of the law firm of
17 Ohanian & Tikriti to protect his rights regarding his efforts to purchase Debtor's real property, to
18 file a proof of claim in Debtor's bankruptcy case and to attempt to acquire the property through
19 the bankruptcy case. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12. As
20 Creditor Zehnaly further testified, "Thereafter, I believed that Ohanian was representing and
21 advocating Zehnaly's rights in the Bankruptcy Court. More particularly, in November 2013,
22 Ohanian filed a Proof of Claim 7-1 on my behalf" *Id.* Regarding communications with
23 Ohanian, his attorney, Creditor Zehnaly testified: "From November 2013, through September
24 2017, Ohanian represented to me both orally and in writing on numerous occasions that my
25 Proof of Claim was being litigated in the Bankruptcy Court. On numerous occasions between
26 approximately April 2016 and September 2017 . . . , Ohanian represented to me both orally and
27 in writing that the Court had awarded the Sarkis Properties, as well as other assets and
28 properties, to me subject to certain conditions." *Id.*

1 Creditor Zehnaly further testified:

2 On numerous occasions between April 2016 and September 2017,
3 Ohanian advised me both orally and in writing that there were
4 numerous complications with taking possession of the Sarkis
5 Properties due to multiple lien claimants, tax liabilities, various law
6 and motion matters, and appeals. On numerous occasions,
7 Ohanian advised me both orally and in writing that the Bankruptcy
8 Court required me to deposit or pay certain funds to protect my
9 interest in the Sarkis Properties and to ensure that I could acquire
10 the Sarkis Properties free and clear of all liens, taxes and
11 encumbrances. Unbeknownst to me, a woman named Silva
12 Sevljan, who I later learned was Ohanian's wife, posed as a court
13 courier and hand-deliver[ed] certain forged documents and false
14 orders, letter and court documents to me.

15 *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12. According to Creditor
16 Zehnaly, these forged documents and false orders included: (1) a purported April 18, 2016
17 court conformed Order Granting Creditor Zehnaly Possession of Debtor's Assets Including
18 Sold Property – Pending Election of Assets by Creditor purportedly signed by Judge Kwan;
19 (2) a purported April 18, 2016 court conformed Court's Disclosure of Liabilities Connected to
20 Property Located in Ontario, CA purportedly signed by Judge Kwan; (3) a purported May 24,
21 2016 court conformed Order: Granting Creditor's Request to Secure Funds to Make Creditors
22 Whole purportedly signed by Judge Kwan; (4) a purported July 19, 2016 court conformed
23 Order: Granting Creditor Zehnaly Final Possession of Debtor's Assets purportedly signed by
24 Judge Kwan; (5) a purported letter from Alvin Mar, the purported Bankruptcy Trustee, dated
25 July 25, 2016, stating that the bankruptcy judge had issued an order awarding the Sarkis
26 Properties to Zehnaly (the court takes judicial notice that Alvin Mar is not a bankruptcy trustee,
27 but an attorney with the Office of the United States Trustee in Los Angeles who has appeared
28 many times before this court, see Federal Rule of Evidence 201); (6) a purported court
conformed October 7, 2016 Order: Approving Settlement Terms and Setting Final Schedule for
Dismissal of Bankruptcy and Creditor Payments purportedly signed by Judge Kwan; (7) a
purported Form 4102B Notice of Cure Payment purportedly reflecting use of Zehnaly's
payments of \$42,983.78; (8) a purported court conformed October 26, 2016 Order: Approving
Final Settlement Terms Between Creditor Zehnaly and LNR Partners, LLC purportedly signed
by Judge Kwan, stating that LNR would convey a deed of trust to Zehnaly based on a payment

1 by him of \$1,298,940.00; (9) a purported December 27, 2016 court conformed Tentative Order:
2 Granting Creditor Zehnaly's Request for Supplemental Award of Real Property purportedly
3 signed by Judge Kwan; (10) a purported February 17, 2017 court conformed Order: Amending
4 First Bankruptcy Discharge Order purportedly signed by Judge Kwan, stating that Zehnaly was
5 to pay \$69,544.23 for amended 2015 tax liability relating to the Sarkis Properties; (11) a
6 purported February 28, 2017 Order: Denying Sarkis Investment Company, LLC's Motion to
7 Reverse on Appeal and for Sanctions purportedly signed by Judge Kwan, stating that Debtor's
8 motion to reverse the order allowing Zehnaly's claim for lack of standing was denied; and
9 (12) a purported March 2, 2017 court conformed Order: Denying Sarkis Investments Company,
10 LLC's Motion to Appeal and Amending Tax Liabilities for Properties purportedly signed by
11 Judge Kwan, which stated that Zehnaly was to pay \$65,867.00 for outstanding tax liabilities for
12 the Sarkis Properties. *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 12-15.
13 Creditor Zehnaly submitted copies of these purported orders with his motion at trial as Exhibits
14 4-16.²

15 With respect to Ohanian's wife, Silva Sevljan, Creditor Zehnaly testified:

16 During this time period (i.e., April 2016 to September 2017),
17 Ohanian's wife, Silvia Sevljan, made numerous telephone calls to
18 me (2-3 times per week on average) with a "spoofed" telephone
19 number which showed the identification of the Bankruptcy Court.
20 Sevljan claimed that she was the Court Clerk, "Debra" or "Barbara,"
21 calling from the Bankruptcy Court and advised me regarding the
22 status of the Bankruptcy Proceedings again confirming Ohanian's
23 oral representations to me, and written representations to me, and
24 written representations in the forged Court Orders and Documents.

21 Debra or Barbara confirmed that the Court was awarding the Sarkis
22 Properties to me. She also explained the reasons why my ability to
23 acquire the Sarkis Properties had been delayed and assured me
24 that such delays were due to court procedures which needed to be
25 followed to ensure that clean and proper title would be awarded to
26 Zehnaly.

26 ² These exhibits were received at trial, except Exhibits 4-8 which were attached to the judge's copy of the motion
27 but not provided to counsel for Debtor. On April 18, 2019, the court entered an order indicating it was
28 reconsidering its evidentiary rulings excluding Exhibits 4-8, providing Debtor with an opportunity to respond, and
setting a further hearing on the evidentiary issue. ECF 611. The court conducted a hearing on the evidentiary
issue on May 1, 2019, at 11:00 a.m. Creditor Zehnaly appeared for himself. Ashley M. McDow appeared for
Debtor. Ralph V. Palmieri appeared for Angelique Bernstein. The court heard Debtor's argument, overruled its
objections, and admitted into evidence Exhibits 4-8.

1 *Declaration of Ghazar Zehnaly*, attached to Motion, ECF 589 at 15. Although this cited
2 testimony is from Creditor Zehnaly's declaration in support of his motion, he testified at length
3 during the one-day trial on February 7, 2019 and was cross-examined extensively by counsel
4 for Debtor. Creditor Zehnaly's testimony at trial is consistent with his declaration in support of
5 his motion, and having observed his demeanor and examined his documentary evidence, the
6 court finds that Creditor Zehnaly's testimony at trial and in his declaration is credible and that
7 the trial exhibits consisting of forged court orders and documents support his testimony. The
8 purported court orders and documents that Ohanian and his wife gave Creditor Zehnaly were
9 forgeries, and given the source, these fake orders and documents indicate that Ohanian and
10 his wife fabricated these documents to defraud Creditor Zehnaly of the funds that he was
11 persuaded by Ohanian to give Ohanian purportedly to pay for Creditor Zehnaly's acquisition of
12 Debtor's property pursuant to the fake court orders and documents.³

13 Debtor in its opposition to Creditor Zehnaly's motion for reconsideration does not
14 dispute his factual assertions in his declaration in support of the motion and did not offer
15 evidence to rebut his factual showing at trial. *Debtor's Opposition*, ECF 593 at 8; *Audio*
16 *Recording, Trial, February 7, 2010, 2:22-2:23 p.m.* Rather, citing *Latshaw v. Trainer Wortham*
17 *& Co.*, 452 F.2d 1097 (9th Cir. 2006), Debtor argues: "Even if the allegations against Zehnaly's
18 former counsel are true it would not establish grounds to set aside under Rule 60(b). Where a
19 party is aggrieved by his or her attorney's negligence, such claim is addressed through a
20 malpractice claim as opposed to relief under Rule 60(b)." *Id.* (citing *Latshaw v. Trainer*
21 *Wortham & Co.*, 452 F.3d at 1101).

22 However, the Ninth Circuit in *Latshaw v. Trainer Wortham & Co.*, acknowledged that
23 "[a]cts of 'fraud on the court' can sometimes constitute extraordinary circumstances meriting
24 relief under Rule 60(b)(6)." 452 F.3d at 1104 (citation omitted). The Ninth Circuit explained,
25

26 ³ The court notes that Creditor Zehnaly's declaration and motion for reconsideration appear to be professionally
27 prepared, as opposed to the handwritten petition that he filed in February 2016, and it appears that the
28 declaration and motion were prepared by Creditor Zehnaly's state court counsel who filed the complaint for
malpractice and related claims against Ohanian because the language, font, and layout of these documents are
the same. However, this does not detract from the credibility of Creditor Zehnaly's testimony because the state
court counsel was willing to go forward with these allegations in filing the complaint in the malpractice case in
state court.

1 "Such fraud on the court 'embrace[s] only that species of fraud which does or attempts to,
2 defile the court itself, or is a fraud perpetuated by officers of the court so that the judicial
3 machinery cannot perform in the usual manner its impartial task of adjudging cases that are
4 presented for adjudication." *Id.* (citations omitted). As the Ninth Circuit further stated:

5 Liberal application is not encouraged, as fraud on the court should
6 be read narrowly, in the interests of preserving the finality of
7 judgments. Our court places a high burden on a plaintiff seeking
8 relief from a judgment based on a fraud on the court. For example,
in order to provide grounds for relief, the fraud must involve an
unconscionable plan or scheme which is designed to improperly
influence the court in its decision.

9 *Id.* (citations and internal quotation marks omitted).

10 In *Latshaw v. Trainer Wortham & Co.*, the Ninth Circuit affirmed the trial court's
11 judgment denying Rule 60(b) relief where the plaintiff sought to set aside a judgment based on
12 a settlement that she accepted under coercion from and based on fraud by her counsel, who
13 allegedly gave her erroneous legal advice and threatened to resign from the case if she did not
14 accept the offer. 452 F.3d at 1099-1100. The Ninth Circuit held that the plaintiff was not
15 entitled to relief under these facts, observing that "[g]enerally speaking, Rule 60(b) is not
16 intended to remedy the effects of a deliberate and independent litigation decision that a party
17 later comes to regret through second thoughts or subsequently gained knowledge that corrects
18 prior erroneous legal advice of counsel." *Id.* at 1099. The Ninth Circuit also noted that Rule
19 60(b)(6) "is used sparingly as an equitable remedy to prevent manifest injustice and is to be
20 utilized only where extraordinary circumstances prevented a party from taking timely action to
21 prevent or correct an erroneous judgment." *Id.* at 1103 (citations and internal quotation marks
22 omitted). Thus, "a party who moves for such relief [under Rule 60(b)(6)] must demonstrate
23 both injury and circumstances beyond his control that prevented him from proceeding . . . with
24 the action in a proper fashion." *Id.* (quoting *Community Dental Services v. Tani*, 282 F.3d
25 1164, 1168 (9th Cir. 2002)) (internal quotation marks omitted).

26 In *Latshaw v. Trainer Wortham & Co.*, the Ninth Circuit also distinguished *Community*
27 *Dental Services v. Tani*, where it concluded that the party was entitled to Rule 60(b) relief. 452
28 F.3d at 1103. In discussing the *Tani* case, the Ninth Circuit in *Latshaw* stated:

1 In *Tani*, we held that the plaintiff was entitled to Rule 60(b)(6) relief
2 from a default judgment on account of his counsel's gross
3 negligence. There, the attorney ignored court orders, neglected
4 motions, missed hearings and other court appearances, failed to
5 file pleadings or serve them on opposing counsel, and otherwise
6 "virtually abandoned his client by failing to proceed with his client's
7 defense despite [repeated] court orders to do so," comprehensively
8 amounting to "the client's receiving practically no representation at
9 all." *Id.* at 1170-71. Pursuant to *Tani*, in the context of default
10 judgments, we now distinguish between "a client's accountability for
11 his counsel's neglectful or negligent acts [which does not merit Rule
12 60(b)(6) relief] and his responsibility for the more unusual
13 circumstance of his attorney's extreme negligence or egregious
14 conduct [which does]."

15 *Latshaw v. Trainer Wortham & Co.*, 452 F.3d at 1103 (quoting *Community Dental Services v.*
16 *Tani*, 282 F.3d at 1168, 1170-1171).

17 In a case subsequent to *Tani* and *Latshaw*, the Ninth Circuit, following *Tani*, held that an
18 attorney's gross negligence resulting in dismissal of the client's case with prejudice for failure
19 to prosecute constituted extraordinary circumstances under Rule 60(b)(6) warranting relief
20 from judgment. *Lal v. State of California*, 610 F.3d 518, 524-525 (9th Cir. 2010). In the *Lal*
21 case, the Ninth Circuit defined gross negligence as "neglect so gross that it is inexcusable."
22 *Id.* at 524 (quoting *Community Dental Services v. Tani*, 282 F.3d at 1168). The Ninth Circuit in
23 *Lal* further stated that an attorney who virtually abandons his client by failing to proceed with
24 this client's defense despite court orders to do so and deliberately deceiving his client about
25 what he is doing or not doing is considered gross negligence. *Lal v. State of California*, 610
26 F.3d at 524.

27 In discussing the particular facts presented in the *Lal* case, the Ninth Circuit focused on
28 the attorney's egregious conduct:

It is obvious that the conduct of Lal's attorney constituted gross
negligence. The facts recounted in Lal's sworn declaration are not
disputed. The similarities between the attorney's conduct in *Tani*
and Spahr's conduct in this case are striking. First, both attorneys
"virtually abandoned [their] client[s] by failing to proceed with [their]
client[s]' [case] despite court orders to do so." *Tani*, 282 F.3d at
1170. The attorney in *Tani* filed the answer late and never provided
plaintiffs with a copy. He "failed to contact [plaintiff] for preliminary
settlement discussions despite being ordered to do so, failed to
oppose [plaintiff's] motion to strike the answer, and failed to attend
various hearings." *Id.* at 1171. Spahr failed to make initial Rule 26
disclosures after being ordered to do so; failed to meet, confer, and

1 participate in the joint case management conference after being
2 ordered to do so; and failed to attend hearings.

3 Second, both the attorney in *Tani* and in Spahr [Lal's attorney]
4 "deliberately misle[d] [their clients] and depriv[ed] [them] of the
5 opportunity to take action to preserve [their] rights." *Id.* Tani's
6 attorney "explicitly represented to Tani that the case was
7 proceeding properly." *Id.* Tani only learned of the default judgment
8 against him when the judgment was mailed to his office. *Id.* at
9 1167. Similarly, Spahr continued to tell Lal that her case was
10 moving forward even after it had been dismissed. In mid-
11 December 2006, Spahr told Lal that the next meeting on her case
12 would be in two to three months, even though the case
13 management conference was scheduled for January 18, 2007.
14 Although the district court had dismissed Lal's action for failure to
15 prosecute on February 2, 2007, Spahr told her in March that
16 Defendants needed more time for discovery. On September 21,
17 2007, Spahr lied to Lal, telling her he had scheduled depositions in
18 her case for November. On October 1, Spahr told Lal that he had
19 refiled her suit in state court. On October 12, Spahr told Lal that he
20 was filing a "pre-hearing motion" in her case. Throughout October,
21 Spahr repeatedly assured Lal that he would give her copies of all of
22 the documents he falsely claimed to have filed in her case. In
23 these circumstances, we hold that Spahr acted with gross
24 negligence and that Lal has demonstrated "extraordinary
25 circumstances" beyond her control that merit relief under Rule
26 60(b)(6).

27 *Lal v. State of California*, 610 F.3d at 525-526.

28 Based on the evidence offered by Creditor Zehnaly in this case, which is not seriously
disputed by Debtor, the court finds that he has met his burden of proving extraordinary
circumstances to warrant relief under Rule 60(b)(6). The facts in this case bear an uncanny
resemblance to the facts of an attorney's extreme negligence or egregious conduct of *Tani* and
Lal warranting Rule 60(b)(6) relief and are dissimilar to the facts of an attorney's neglectful or
negligent acts of *Latshaw* which does not merit Rule 60(b)(6) relief.

The facts of this case, like those in *Lal*, involve a lack of prosecution that resulted in a
judgment against the client, here, Creditor Zehnaly. Allowing the court's order disallowing
Creditor Zehnaly's claim to stand in the face of the gross negligence, if not fraud, by his
attorney, Ohanian, in scheming to hide from Zehnaly the true facts of the lack of prosecution of
his claim in order for the attorney to misappropriate his funds, would work an injustice to
Zehnaly and would undermine public confidence in the judicial process. The evidence
presented in this case shows that Creditor Zehnaly's attorney, Ohanian, failed to prosecute

1 Zehnaly's claim while at the same time making oral and written misrepresentations to Zehnaly
2 that he had prevailed in the claim process in order to misappropriate Zehnaly's funds. The
3 evidence also shows that Ohanian went to great efforts to disguise his scheme to defraud
4 Creditor Zehnaly by fabricating false court orders and case related documents as fake
5 bankruptcy trustee letters, having his wife pretend to be a court courier to hand-deliver these
6 fake orders and documents to Zehnaly, and having his wife constantly call Zehnaly
7 masquerading as a court clerk to deceive Zehnaly about the status of his claim in Debtor's
8 bankruptcy case.

9 The court finds that the risk of injustice to Creditor Zehnaly and the risk of undermining
10 the public's confidence in the judicial process are strong factors in finding that Creditor Zehnaly
11 has demonstrated extraordinary circumstances to warrant Rule 60(b)(6) relief. The factual
12 circumstances here fall within the description of "fraud on the court" justifying relief under Rule
13 60(b)(6) as stated by the Ninth Circuit in *Latshaw v. Trainer Wortham & Co.*: "Such fraud on
14 the court 'embrace[s] only that species of fraud which does or attempts to, defile the court
15 itself, or is a fraud perpetuated by officers of the court so that the judicial machinery cannot
16 perform in the usual manner its impartial task of adjudging cases that are presented for
17 adjudication." 453 F.3d at 1104. The conduct of Ohanian, a licensed member of the State Bar
18 of California and an officer of the court, in lying to his client, Creditor Zehnaly, and in
19 fabricating false court orders and documents and forging the judge's signature to deceive and
20 cheat his client of large sums of money, some \$3 million, defiles the court and the judiciary and
21 is a fraud perpetuated by an officer of the court so that the judicial machinery could not perform
22 in its usual manner in this case its impartial task of adjudging cases that are presented for
23 adjudication because Ohanian failed to appear and defend Creditor Zehnaly in this case and
24 lied to Creditor Zehnaly about the status of the case, which resulted in Creditor Zehnaly
25 suffering a defeat on his proof of claim by default caused by his attorney's gross negligence, if
26 not fraud. The sense of injustice is heightened in this case because of the circumstances and
27 alleged amount of Creditor Zehnaly's claim against Debtor. The basis for Creditor Zehnaly's
28 claim is that he allegedly made a deposit of \$500,000 with Debtor for the purchase of its real

property, which Debtor did not return even though it did not sell the property to him, and the amount of Creditor Zehnaly's unrefunded deposit is substantial. See Motion, ECF 589 at 3 and Proof of Claim No. 7-1. Therefore, the court determines that Creditor Zehnaly has presented sufficient evidence to prove that extraordinary circumstances warrant granting his motion for reconsideration under Federal Rule of Civil Procedure 60(b)(6) by a preponderance of the evidence.

2. Creditor Zehnaly Brought His Motion "Within a Reasonable Time."

Creditor Zehnaly's motion for reconsideration of the order disallowing his claim is subject to the requirement of timeliness of Federal Rule of Civil Procedure 60(c), which states that "[a] motion under Rule 60(b) must be made within a reasonable time." Federal Rule of Civil Procedure 60(c). Debtor's primary objection to Creditor Zehnaly's motion is that the motion was not made within a reasonable time. *Debtor's Opposition*, ECF 593 at 6-8.

Specifically, Debtor argues:

Motions under FRCP 60 must generally be made "within a reasonable time," and motions based on surprise (rule 60(b)(1)), newly discovered evidence (Rule 60(b)(2)), or fraud (Rule 60(b)(3)) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding." FRCP 60(c). A motion filed pursuant to Rule 60(b)(6) ("any other reason justifying relief") must be brought within a reasonable time. *In re Pacific Far East Lines, Inc.*, 889 F.2d 242, 249 (9th Cir. 1989). A party who files a Rule 60(b) motion after the time for the appeal has run, however, must establish the existence of extraordinary circumstances which prevented or rendered him unable to prosecute an appeal. *Plotkin v. Pacific Tel & tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982).

. . . [A]ssuming arguendo Zehnaly is moving to vacate the Order to Disallow for other extraordinary reasons under FRCP 60(b)(6)—which the Debtor contends he is not—he fails to show that he acted "within a reasonable time," as required by that subsection. What constitutes a reasonable time "depends on the reason for failing to act sooner and whether the nonmoving party has been prejudiced by the delay." *In Re Pacific Far East Lines, Inc.*, 889 F.2d at 249.

Here, Zehnaly fails to offer "extraordinary reasons" for his over 30 months delay in challenging the Order to Disallow, especially since he received numerous notices regarding the Bankruptcy Case and the ruling on the Motion to Disallow in 2016-2017, and he failed to make any actions since filing the Zehnaly Declaration and the Amended Zehnaly Declaration in early February 2018, in which he admitted having knowledge of the Order to Disallow. See *Jarvis v. Gyore*, 972 F.2d 1340 (9th Cir. 1992). Furthermore, Zehnaly fails to explain why he took no action, including finding another attorney, despite receiving various notices and reports in the Bankruptcy

1 Case informing him of the status of the Bankruptcy Case and the
2 Motion to Disallow.

3 Moreover, significant time has elapsed since the entry of the Order
4 to Disallow, and the Debtor is near completion of the administration
5 of the Bankruptcy Case. The Debtor will be significantly prejudiced
6 if it is forced now to relitigate the Motion to Disallow, especially
7 since the events arising from this claim go back as far as 2012-
8 2013. Accordingly, given the absence of an acceptable justification
9 for a delay of this length, the Court . . . should deny the Motion to
10 Reconsider.

11 *Debtor's Opposition*, ECF 593 at 6-7.

12 What constitutes "reasonable time" depends on the facts of each case. *In re Pacific Far*
13 *East Lines, Inc.*, 889 F.2d 242, 249 (9th Cir. 1989). Among the factors a court should consider
14 are whether a party is prejudiced by the delay and whether movant had a good reason for
15 failing to act sooner. *Id.*

16 The court entered its order disallowing Creditor Zehnaly's claim on June 3, 2016.
17 According to Creditor Zehnaly in his reply to Debtor's Opposition, he was "not aware of the
18 Court's Order until late 2017." Reply, ECF 454 at 2. The evidence at trial indicates that
19 Creditor Zehnaly was aware that his attorney, Ohanian, had deceived him about the status of
20 his claim in the bankruptcy case at least by September 2017. With respect to the factor that
21 the court must consider as to whether Creditor Zehnaly as the movant here had a good reason
22 for failing to act sooner than November 2018 when he filed his motion for reconsideration,
23 Debtor argues that he did not because the various notices and status reports filed earlier
24 should have put him on notice of the order disallowing his claim. Thus, Debtor argues,
25 November 2018, about 30 months after the court entered its order disallowing his claim in June
26 2016, is much too late.

27 Creditor Zehnaly contends that he was not aware of the court's order disallowing his
28 claim until late 2017. The evidence supports his contention. The proofs of service of the
court's order to show cause regarding the failure of Creditor Zehnaly to appear at the status
conferences of February 24, 2016 and April 6, 2016 and the order disallowing his claim filed
and entered on June 3, 2016 do not show service on him directly. Moreover, the proofs of
service of the order to show cause and the order disallowing Creditor Zehnaly's proof of claim

1 do not show service on his attorney, Ohanian, and it is inexplicable why the Bankruptcy
2 Noticing Center did not serve copies of these orders on Creditor Zehnaly's counsel, Ohanian,
3 who was listed as the notice party on the proof of claim and in the opposition to Debtor's
4 motion objecting to his proof of claim, which lack of service indicates a serious procedural due
5 process issue. However, Debtor had filed a notice of lodgment of a proposed order disallowing
6 the claim, but the proof of service showed service of that document only on Creditor Zehnaly's
7 attorney, Ohanian, and not on Creditor Zehnaly directly. Ohanian was aware of the order to
8 show cause proceedings because he made an appearance at the hearing on the order to show
9 cause purportedly for Creditor Zehnaly on May 4, 2019. However, it was at this time that
10 Ohanian was implementing his scheme to defraud his client, Creditor Zehnaly, by fabricating
11 and forging court orders and delivering them to Creditor Zehnaly as indicated by the bogus
12 orders dated April 18, 2016, April 28, 16 and May 24, 2016, stating that the Sarkis Properties
13 were being awarded by the Bankruptcy Court to Creditor Zehnaly, but that Creditor Zehnaly
14 had to pay off the claims of Debtor's creditors to acquire the properties, and Ohanian was
15 collected the funds from Creditor Zehnaly for this alleged purpose, but in reality, keeping the
16 funds for himself. Under these circumstances, it is problematic to attribute notice of the order
17 to show cause to the dishonest attorney, Ohanian, as notice to Creditor Zehnaly.

18 As discussed above, Creditor Zehnaly testified that Ohanian never told him about the
19 court's order disallowing his claim because Ohanian was deceiving him by providing him with
20 false representations and fabricated court orders showing that he had prevailed in his litigation
21 with Debtor, which representations and orders were not true. As previously stated, Creditor
22 Zehnaly in his petition and declaration filed on February 2, 2018 claimed he was a victim of
23 fraud by his attorney, Ohanian, and that by September 2017, he discovered his attorney was
24 lying and committed fraud. Thus, by Creditor Zehnaly's admission, he was aware as of
25 September 2017 that his attorney lied to him about the status of his claim and that his claim
26 was disallowed.

27 Debtor contends that its status reports during the time period from April 2016 through
28 January 2018 put Creditor Zehnaly on notice of the court's order disallowing his claim in June

1 2016; that is, Debtor argues that the status reports specifically described the status of
2 proceedings relating to Debtor's objection to his claim, including the status conferences in
3 February and April 2016 at which Ohanian, Creditor Zehnaly's attorney, failed to appear, which
4 led to the issuance of the order to show cause why the claim should not be disallowed for lack
5 of prosecution based on failure of appearance by Ohanian at the status conferences, the
6 withdrawal from the mediation proceedings, the taking of Creditor Zehnaly's deposition, and
7 Ohanian's failure to communicate with counsel for Debtor. The status reports of April 6, 2016,
8 April 20, 2016 and June 1, 2016 described Ohanian's failures to appear at the status
9 conferences on Creditor Zehnaly's behalf and the court's issuance of the order to show cause
10 for disallowance of his claim based on such failures, and the proofs of service of these status
11 reports indicate service by mail not only on Ohanian, but also on Creditor Zehnaly himself at
12 his admitted mailing address. Citing *In re Bucknum*, 951 F.2d 204 (9th Cir. 1991), Debtor
13 argues that the presumption from the "mailbox rule" applies here and that its mailing of the
14 status reports to Creditor Zehnaly at his mailing address created a presumption of receipt of
15 notice to him of the status reports. *Debtor's Brief with Memorandum of Points and Authorities*
16 *Regarding Mailbox Rule*, ECF 599, filed on February 14, 2019. "Mail that is properly
17 addressed, stamped and deposited into the mails is presumed to be received by the
18 addressee." *In re Bucknum*, 951 F.2d at 207. The proof of service of Debtor's status reports
19 show that they were served by mail on Creditor Zehnaly at his mailing address on the dates of
20 mailing indicated in the proofs of service, and Creditor Zehnaly does not dispute that the status
21 reports were duly mailed to him as represented on the proofs of service.

22 In response to Debtor's contentions that Creditor Zehnaly was aware of the court
23 proceedings regarding the disallowance of his claim based on its status reports, Creditor
24 Zehnaly testified that he was not aware of these reports because he did not receive any
25 bankruptcy case related papers in the mail, stating that he suspected that Ohanian and his
26 wife intercepted his mail since his mailbox in front of his house could have been opened and
27 the contents removed. Creditor Zehnaly testified that his neighbor saw someone who looked
28

1 like Ohanian's wife near his mailbox. However, Creditor Zehnaly did not testify that he
2 personally observed anyone removing anything from his mailbox.

3 The court finds Creditor Zehnaly's testimony that he was not aware of the court's order
4 disallowing his claim until September 2017 to be credible. His testimony that Ohanian lied and
5 deceived him about the status of his claim in this case and that he did not otherwise know
6 about the court's order disallowing his claim is also credible. Creditor Zehnaly's testimony is
7 credible that Ohanian made false oral and written representations to him that he was prevailing
8 in his dispute with Debtor to acquire its real property; that he was provided with false
9 bankruptcy court documents, including fabricated orders with forged signatures of the
10 bankruptcy judge, showing that he prevailed in the litigation with Debtor; that a purported court
11 courier hand-delivered such false documents to him during the time period of approximately
12 April 2016 to March 2017; that this purported court courier was Ohanian's wife; that a
13 purported bankruptcy court clerk identifying herself as "Debra" or "Barbara" regularly called
14 him with the spoofed court identification to tell him false reports of the status of the litigation
15 stating that the court had found in his favor and against Debtor; and that he relied upon
16 Ohanian's representations supported by the purported court orders and other court documents
17 and telephone calls from the purported court clerk to make the payments of approximately \$3
18 million to Ohanian purportedly to satisfy the conditions set by the purported court orders to
19 acquire Debtor's real property. If Creditor Zehnaly had notice otherwise that the court did not
20 rule in his favor in the litigation to acquire Debtor's property, he would not have given Ohanian
21 all the money totaling approximately \$3 million to secure the acquisition of the Debtor's real
22 property. Ohanian's barrage of fraudulent visits and advice supported by fraudulent court
23 orders and fraudulent telephone calls and deliveries from imposter court staff obscured
24 Debtor's status reports served on Creditor Zehnaly to the extent that they were actually
25 delivered and received, which it appears that they were not because Ohanian needed to
26 intercept them to carry out his fraud scheme.

27 The various notices and status reports in the case did not put Creditor Zehnaly on
28 notice of the court's order disallowing his claim. As previously noted, the proofs of service of

1 the court's order to show cause and its order disallowing Creditor Zehnaly's claim did not list
2 him at his mailing address. These proofs of service indicated that Ohanian was served, but as
3 Creditor Zehnaly testified, Ohanian did not provide him with these documents; rather, Ohanian
4 provided him with false and fabricated court orders and documents to further the scheme to
5 defraud Creditor Zehnaly.

6 Additionally, Debtor's status reports did not provide adequate notice of the court's order
7 disallowing Creditor Zehnaly's claim to him. First, the status reports were status reports, and
8 captioned as such did not put the service parties on notice that the status reports pertained to
9 their specific circumstances or that there were going to be specific consequences to them.
10 Second, not all of the status reports pertained to the specific circumstances of Debtor's
11 objection to Creditor Zehnaly's claim; only the status reports of April 6, 2016, April 20, 2016
12 and June 1, 2016 pertained to that matter, while the other status reports of September 15,
13 2016, August 24, 2017, December 6, 2017, and January 12, 2018 pertained only to the
14 general status of the bankruptcy case. Third, the status reports were not specifically
15 addressed to Creditor Zehnaly; rather, they were addressed to the court and to interested
16 parties in general, and this did not meaningfully alert the service parties that they were
17 specifically affected by the matters discussed in the status reports.

18 Fourth, the court is persuaded that bankruptcy related mail to Creditor Zehnaly was
19 probably intercepted by Ohanian because Ohanian had a motive and ability to do so in order to
20 keep Creditor Zehnaly from learning the true facts about the claims objection litigation because
21 that would have foiled Ohanian's elaborate scheme to extract money from Zehnaly and
22 Ohanian was on the service list of any bankruptcy related correspondence since his address
23 was the address on Creditor Zehnaly's proof of claim for notice purposes and was in contact
24 with Debtor's counsel regarding its motion objecting to Creditor Zehnaly's proof of claim.
25 Moreover, as a lawyer practicing before the court, Ohanian would also have been familiar with
26 the PACER system to access electronic records of the court, including the case docket for this
27 case, and thus Ohanian would have had prior access of developments in the case before
28 Creditor Zehnaly who was a layperson and not familiar with court procedures. Creditor

1 Zehnaly's testimony and evidence regarding the false court orders and documents, the scam
2 hand-delivery of these documents by Ohanian's agent, and bogus telephone calls from
3 Ohanian's agent impersonating a bankruptcy court is credible and shows the extent to which
4 Ohanian went in carrying out his elaborate scheme to deceive and defraud Creditor Zehnaly to
5 the tune of \$3 million. The court finds that Creditor Zehnaly's testimony and evidence is
6 credible and that his contention that Ohanian also intercepted his mail is credible because if
7 Ohanian was fabricating false court orders and documents and having an agent hand-deliver
8 these documents to Zehnaly, it is quite conceivable that he had an agent intercept Zehnaly's
9 mail if Ohanian did not do it himself. Allowing Debtor's status reports, which reported the true
10 status of the case, to be received by Creditor Zehnaly would have put Ohanian's scheme in
11 jeopardy, and it is quite likely that Ohanian also took the precaution of intercepting Zehnaly's
12 mail, as far-fetched and incredible as that may seem. While the presumption from the mailbox
13 rule applies here because it is undisputed that counsel for Debtor mailed copies of its status
14 reports to Creditor Zehnaly at his admitted mailing address, the court determines that Creditor
15 Zehnaly has rebutted the mailbox rule presumption based on the evidence of Ohanian's fraud
16 and interception of Zehnaly's mail to prevent Zehnaly from receiving the status reports and
17 other bankruptcy case related mailing, which enabled Ohanian to provide Zehnaly with false
18 bankruptcy case orders and documents to carry out the scheme to defraud Zehnaly of
19 approximately \$3 million.

20 At the same time that the status reports were mailed to Creditor Zehnaly during the time
21 period of April 2016 to September 2017, Creditor Zehnaly was given constant representations
22 from his attorney, Ohanian, that he had prevailed in the case, which were backed up by
23 purported signed orders of the court on their face showing that he prevailed. The status
24 reports were merely representations from another party in the case, Debtor, that did not have
25 the same gravity of authority as purported signed orders of the court. The purported orders
26 showed that Creditor Zehnaly had prevailed, which were backed by representations of Creditor
27 Zehnaly's retained counsel, Ohanian, who at the time was a member of the State Bar of
28 California and an officer of the court. If Creditor Zehnaly had received Debtor's status reports,

1 which the court does not find, he may have well disregarded them as the representations of an
2 interested party litigant in favor of purported signed orders having the apparent authority of the
3 court adjudicating his dispute with Debtor, and thus it is understandable that Creditor Zehnaly
4 may not have considered or remembered receiving Debtor's status reports.

5 Debtor further argues that even if Creditor Zehnaly did not learn of the court's order
6 disallowing his claim until September 2017, his motion to reconsider filed in November 2018 is
7 not made within a reasonable time (i.e., 14 months later). Creditor Zehnaly, who was self-
8 represented, did not file his formal motion to reconsider until November 2018. According to
9 Creditor Zehnaly, after he learned of Ohanian's fraud, he did not know what to do, and while
10 he consulted three or four attorneys, including one who identified himself as a bankruptcy
11 attorney, Creditor Zehnaly said that he was not convinced of their advice, and therefore, he did
12 not retain an attorney to seek reconsideration of the court's order disallowing his proof of claim.
13 Counsel for Debtor argued that Creditor Zehnaly just did not like what the lawyers he consulted
14 had told him, and his delay in seeking reconsideration until November 2018 is unreasonable.
15 Debtor's argument is not without force because it is troubling that Creditor Zehnaly learned of
16 Ohanian's deception and the court's order disallowing his claim by September 2017 and his
17 motion for reconsideration was not filed until November 2018, 14 months later. Although
18 Creditor Zehnaly did consult four or five attorneys about what to do about the situation, he
19 declined to retain any one of them and attempted to handle the situation himself, even though
20 he is not an attorney, but with nine properties, had the means to retain counsel.

21 However, Creditor Zehnaly did try to bring the matter to the court's attention when he,
22 as a self-represented party, filed his "petition" and declarations earlier in February 2018, which
23 was only about 6 months after his discovery of Ohanian's deceit and the true facts about his
24 claim. Creditor Zehnaly's petition and declaration were ineptly presented to the court because
25 he did not comply with the applicable rules of notice of hearing and service on the court. For
26 example, Creditor Zehnaly did not present his requests for court ordered relief in a motion
27 noticed for hearing before the court pursuant to Federal Rule of Bankruptcy Procedure 9013
28 and Local Bankruptcy Rule 9013-1. He did not serve a judge's copy of his petition and

1 declaration in accordance with Local Bankruptcy Rule 5005-2(d). Creditor Zehnaly in filing his
2 petition and declarations with the court in February 2018 did, nevertheless, cause the court to
3 make electronic notice to the electronic notice parties, including counsel for Debtor, who is on
4 the court's notice of electronic filing service list. Moreover, Creditor Zehnaly served a copy of
5 his petition and declaration in February 2018 by hand-delivery by his son, Armen, on counsel
6 for Debtor, so Debtor was put on notice of the issue of Creditor Zehnaly's being deceived and
7 victimized by his attorney, Ohanian, with respect to the attorney's handling of Zehnaly's claim.
8 Also, the court notes that notice of Ohanian's declaration admitting that he had mishandled
9 Creditor Zehnaly's claim filed with the court in January 2018 was sent by the court to counsel
10 for Debtor. Thus, Debtor through counsel was aware that there was a controversy regarding
11 the disallowance of Creditor Zehnaly's claim as of January 2018, but Debtor did not advise the
12 court of this controversy in any status report filed afterwards, including the status reports filed
13 on March 15, 2018 and September 26, 2018, ECF 564 and ECF 585. Apparently, Debtor
14 thought it could just ignore Creditor Zehnaly's inconvenient petition and hopefully he would go
15 away without it having to explain in this court why it did not return his \$500,000 down payment
16 for the purchase of the Sarkis Properties that he never got.

17 Debtor asserts that it would be prejudiced if the court reconsiders its order disallowing
18 Creditor Zehnaly's claim because Debtor is near completion of the administration of this
19 bankruptcy case, and the events related to this claim go back to 2012-2013. *Debtor's*
20 *Opposition*, ECF 593 at 7. However, Debtor provides no specific facts or evidence supporting
21 its claim that it would be prejudiced by reconsideration. *Audio Recording of Trial, February 2,*
22 *2019. 2:24 p.m.* Debtor has pending with the court a motion for a structured dismissal and a
23 final fee application for its general bankruptcy counsel, but Debtor is not pursuing a plan of
24 reorganization at this time. The court does not see that there would be any prejudice for
25 Debtor to address Creditor Zehnaly's claim on the merits since it has to deal with creditors'
26 claims for a structured dismissal, it is not pursuing a plan of reorganization, distributions have
27 not been made to creditors, and not all of the disputes relating to creditors' claims have been
28 resolved, i.e., Creditor Zehnaly's claim. The court does not give much credence to Debtor's

1 claim that the events relating to this claim go back to 2012-2013. Debtor does not indicate
2 specifically how this would adversely affect it, and Debtor did not provide any evidence in
3 support of this claim. Debtor did not file its objection to Creditor Zehnaly's claim until August
4 2015, and while the objection was determined by the order disallowing the claim in June 2016,
5 Debtor was on notice that there may be an issue regarding the order when Ohanian filed his
6 declaration about the order disallowing claim in January 2018, and Creditor Zehnaly filed his
7 petition and declarations in February 2018. Accordingly, the court finds that extraordinary
8 circumstances justify granting the motion, that reconsideration of the order disallowing Creditor
9 Zehnaly's claim will not prejudice Debtor, and that Creditor Zehnaly brought his motion for
10 reconsideration within a reasonable time under the circumstances.

11 The granting of Creditor Zehnaly's motion for reconsideration does not imply that he is
12 entitled to relief on the merits of his proof of claim with respect to Debtor's objection to it. The
13 validity of Creditor Zehnaly's proof of claim remains to be decided with the opportunity of
14 Debtor to fully and fairly contest the proof of claim on its objection. The granting of Creditor
15 Zehnaly's motion for reconsideration simply means that he gets to have his day in court on the
16 merits of his claim, which he had been wrongly deprived of due to the egregious conduct of his
17 dishonest attorney, Ohanian, who deceived him and betrayed his trust, which, the court adds,
18 was done without any fault on the part of Debtor.

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1 **III. CONCLUSION**

2 Based on the foregoing, the court determines that it should grant Creditor Zehnaly's
3 motion for reconsideration of the order denying his claim entered on June 3, 2016 for cause
4 under 11 U.S.C. § 502(j) based on extraordinary circumstances under Federal Rule of Civil
5 Procedure Rule 60(b)(6), made applicable here by Federal Rule of Bankruptcy Procedure
6 9024. The court will enter a separate order granting the motion.

7 IT IS SO ORDERED.

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23 Date: May 14, 2019



24 _____
25 Robert Kwan
26 United States Bankruptcy Judge
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